

THE 1508/972

Gentleman's Assistant, Tradesman's Lawyer,

AND

COUNTRY-MAN'S FRIEND.

- I. Directing them in Contracts, Bargains and Agreements, whereby they may learn to buy and contract safely, and cautiously avoid being over-reached in their Bargains, &c.
- II. Concerning borrowing, lending and restoring, and of Goods pledged and pawned.
- III. Setting forth several other adjudged Cases relating to Tradesmen, &c.
- IV. Cases relating to Farmers, and concerning Stoppage of Ways, Water-courses, Lights, Commons, and several other Nuisances.
- V. Concerning scandalous Words; purposely spoken to the Prejudice of a Man, &c.
- VI. Concerning Leases, Mortgages, Corn, Waste, Distresses, &c. Also many other matters relating to Landlord and Tenant.
- VII. Concerning discharging and ending of Actions, Suits and Controversies, and therein largely concerning Arbitraments, Awards and Umpirage, with all their Circumstances.
- VIII. Certain Statute-Laws, concerning Labourers, Tradesmen, Artificers, Apprentices, Petty Chapmen, &c.

Collected from the Ancient and Modern Law-Books, and confirmed by several Authorities; and therefore may be useful as well to the Professors of the Law, as to Gentlemen, Tradesmen and others.

The Third Edition, corrected and enlarged with an Appendix and many other proper Additions; with a TABLE to the Whole.

In the SAVOY:

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THE

PREFACE.

THE Law being appointed to order the peaceable Government of the Kingdom, and to execute Justice among the People; with the one Hand punisheth such as offend, and with the other weigheth to every Man his Due; and to that End hath provided wholsome Ordinances and Statutes, as well to teach the People their Duty, as thereby to preserve them in their Lives, Liberties and Estates; hath also reported the State of most Cases for many Ages past, with the Consequents and Judgments thereupon, to be to them for Rules and Guides, whereby to steer their Course in the wide Sea of Trade and Business one amongst another; upon the latter of which it is now my Purpose to treat; and it is therefore as well necessary for Self-preservation,

The PREFACE.

vation, as beneficial to the Estate of all Men, to learn and observe as much as may be what the Law directeth in every Particular. As for Persons of a higher Rank, they have both Learning and Leisure to read the Law; but for the Commonalty and ordinary Tradesmen, most are wanting in the first, many cannot obtain the latter, and some are Strangers to both; whereby several Inconveniences happen to them, and they are often put upon by cunning Men, who contrive to prey upon their Ignorance: Upon Consideration of which, and for that (like this) scarce any thing hitherto hath been composed, brief, compact, and suitable to the Leisure and Capacity of those for whom it is intended, I thought it not mispent Time to fit up these few Sheets for the Use of such as shall also think it worth their While to peruse them; whereto I have added several Books and Authorities to warrant these Rules, not doubting but some may examine them as well as read them, to whose judicious Correction I submit my self and Work.

Now

Now if any Person shall raise an Objection, and say, that here are several little Causes of Action discovered, which had better been kept private, because litigious Persons will make bad Use of them, to the Disturbance of their Neighbours: I must answer, they are no other than what formerly have been published for general Observation, and that by learned Lawyers; yet I will further add, that *De minimis non curat Lex*, the Law takes no Notice of trifling Matters; also to ground Actions of the Case for supposed Wrongs or Injuries, there must appear to be in the Case some Malice in the Party that doth the Wrong, and some Damage to the Party to whom the Wrong is done; for if there be Malice and no Damage done by it, there can be nothing recovered, so the Action will be vain and to no Purpose; and if there be Damage and no Malice, it is scarcely punishable by Law; yet the Degree of Malice may aggravate the Wrong and encrease the Damage. But in all Cases where there is both apparent Damage and Malice or Injury, an Action may well be brought, which

The PREFACE

which I leave to every Man's Discretion, earnestly desiring that all Men would rather study Peace and Goodwill one towards another, than unnecessarily to trouble the Law and Lawyers, which direct them to better things, viz. the ending of Strife and Controversy; for which Purpose I have also herein set down the chief Heads and Matters relating to Arbitrement and Awards, a Remedy provided by the Law for the speedy ending of Differences amongst Neighbours; by the Perusal whereof I hope the Reader will receive a good Satisfaction, and approve of the Endeavours of him who desires to be an Instrument of Peace and Moderation amongst all Men.

Fœlix quem faciunt aliena pericula cautum.

The



Trades-Man's Lawyer,

AND

COUNTRY-MAN'S FRIEND.

CHAP. I.

Action and Contracts defined.

THE Remedy which the Law Affords, what gives to every Man, according to his particular Case and Damage is by an Action.

An Action therefore is a lawful Demand of Right, or 'tis a Complaint of an Injury received, and is said to be either

Real,
Personal,
Or Mixt.

Co. Lit. 284. 6.

B

1. Real;

The Trades-Man's Lawyer, and

1. Real; As when a Man claimeth Title to have a Freehold in Lands, Tenements, Rents, Commons, and the like; either to him and his Heirs for ever, or to him and his Heirs, Males or Females, or for Term of his Life, either of his own Possession, or of the Seisin and Possession of his Ancestor. *Bract. li. 3. ca. 3. n. 3.*

2. Personal; When he claimeth Debt, or other Goods and Chattels, or Damages for them, or Damages for Wrong doné to his Person; and this is sometimes popular and given to any Man that will sue, as upon a Statute; or else particular, to one or more in certain. *Bract. li. 3. ca. 3. n. 2.*

3. Mixt; As when he claimeth not only a Real thing, but seeketh also Damages for the Wrong sustain'd. *Bract. li. 3. cap. 3. nu. 5.*

Many more are the Divisions made of Actions in general. As

Actions } Criminal,
 } Civil,
 } Entire, Popular, &c.

Which it is not here my Purpose to define.

But the Action of which I now intend to treat, is that which is Personal, and ariseth,



From

From { Contracts, Bargains, and Sales, and Agreements concerning Chattels, and the like. }

A Contract is an Agreement between two or more, either about Something to be done, (whereby both Parties are bound each to other,) or one to the other, or more strictly for the doing or having one thing for another; but more exactly for the buying and selling of Goods or Chattels, whereby the Property of them is altered.

There are also said to be several kinds of Contracts,

{ Real, Personal,

As { Express, Implied,

{ Absolute, Conditional.

1. Real; As when it is about Land, *Real.* or some such real Thing.

2. Personal; As where it is about *Personal.* Payment of Money, Delivery of Goods, or the like, in personal Things.

3. Express; As where a Man agrees *Express.* to give another 10 *l.* for a Horse.

4. Implied (that is by Law) the Law *Implied.* operating where it doth not arise from

the express Agreement of the Parties, (as for Example) If an Hostler give my Horse Meat, or a Taylor makes me a Garment; the Law implies a Contract that they shall be paid, the one for his Corn, the other for his Work, &c.

Absolute.

5. Absolute; That is, when it hath no Reference to another Thing, as in the giving ten Pounds for a Horse, &c.

Conditional.

6. Conditional; That is, when it hath Reference to something else; as where I agree that I will give ten Pounds, or so much for a Horse, if my Brother, or if my Neighbour shall say the Horse is worth so much.

Contract by Writing, or by Word of Mouth.

And further, A Contract is sometimes made by Writing, and sometimes by Word of Mouth. But 'tis chiefly my purpose to speak to the latter, yet observe, That altho' a Contract be by Writing, and that Writing be not sealed and delivered, it operates no more than that which is by Word of Mouth, and therefore all one. But if it be put in Writing, and sealed and delivered, it thereby becomes a Deed, and is under another Consideration, and in many Cases differs from a Contract by Word of Mouth.

Executed.

Amongst these Contracts some are more publick, instant, and executed; as where the Price and Consideration is paid and performed; and the Thing bought delivered, &c. *Plowd. 130, 140, 103. Finch Ley 451.*

Others

Others are more private, deliberate, *Express*, and executory, as where all or Part of the Thing agreed upon is to come: As that if you shall build me a House, or bring me in so much Corn by such a Day; that then I shall pay you so much Money, or the like. *Dyer* 30, 336.

And in all Contracts, Bargains, Sales, Quid pro Promises and Agreements there ought Quo. to be *Quid* for *Quo*; a Recompence or Consideration presently given, or promised at least at a Day expressly fix'd, for or in Lieu of the Thing to be done or delivered, otherwise it is nothing but Communication and Discourse, a bare Bargain void in Law, and no Action will lie upon it. *Noy's Max* p. 87.

Yet the Want of this Consideration or present Promise is often remedied by the Law, especially in the Case of Buying and Selling.

For as the Contract is said to be express and implied, so also is the Consideration and Promise.

Therefore Consideration express, is *Cons. express*, where I promise you ten Pound in Consideration that you will build me a House.

Implied is, Where at my Instance, *Cons. implied*, you have done Work for me, the Law implies, That in Consideration thereof I shall pay you. Nay further, in that Case the Law will imply and say, That I did therefore promise to pay you.

B 3 So

*Implication of
the Law.*

So that by help of the Law in some cases there is exprefs and implied Contract, exprefs and implied Consideration, and exprefs and implied Promise, the Law making up an exprefs or implied Contract between the Parties, accordingly as it finds either an exprefs or implied Consideration, and where there is an exprefs Consideration, there is usually an exprefs Promise. But the exprefs Promise is made by the Party contracting, and in Default thereof the Law in some Cases implies one.

Recovery.

By an exprefs Promise the Party recovers the Things or Money promised, by an implied one, as much as he deserves, or the Thing or Goods were worth; and this he is as much bound unto as if he had promised to do it, as is after set forth. *Doct. & Stud.* 104.

CH A P. II.

Of Contracts, &c. supposed to be executed.

AS to those Contracts which are more publick and immediate, (as buying Goods of a Shopkeeper, &c.) Seller is bound and intended to be instantly executed. *The Buyer must pay before the Seller is bound to deliver.*

If a Man comes to a Shop or Warehouse, and there agrees for a Piece of Ware, yet he may not carry them away (against the Will of the Merchant) before he hath paid for them, (unless he hath a Day or Time expressly given him) but the Merchant may retain his Wares until he be paid. Yet if the Buyer do take them away before the Money paid, or Day set, the Seller may forthwith have an Action of Trespass, or of Debt (at his Choice) for the Money. *Noy's Max. pa. 87. Register 50 258.*

So that in this Case it is in the Election of the Merchant or Seller to make it a Bargain or not; for though the Price of the Wares be set, yet the Shopkeeper may, if he will, keep his Goods till the other pay him his Money, or he may sell it to another. *Here the Seller has Advantage, he may keep them, or sell them to another.*

For where the Money is not paid, nor Earnest given nor Day set for Payment of it, nor the Goods or Things delivered,

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livered, the Property then is not altered, and no Action will lye, either against the Chapman for the Money, or against the Shopkeeper for the Thing cheapned. *Plowd.* 309, 302.

He may confirm the Bargain, or refuse it.

But if the Shopkeeper, as aforesaid, suffer the Chapman to take away the Goods after such Price set, he may then make a Bargain of it (if he will) and bring either an Action on the Case or an Action of Debt for the Price or Value.

Yet in another Case it is in the Power of the Buyer or Chapman to take Advantage of the Price set, and to make it a Bargain.

Here the Buyer or Chapman has the Advantage.

For if a Chapman offer Money for a Thing, Goods, or Wares in a Shop, Fair, or Market, and the Seller agree to take his Offer: Now if the Chapman or Buyer upon this Bargain goes to telling his Money as fast as he can, and in the mean time the Seller sells the Thing, Goods, or Wares to another. In this Case the first Buyer or Chapman may (after Tender and Refusal of the Money or Price set and agreed on) take the Thing so cheapned and bought, or otherwise recover by Action. *Dyer* 218. 11 Co. 48 *Plowd.* 308.

He may take the thing, or recover by Action.

Earnest binds the Bargain.

Earnest Given binds.

So if the Bargain be, that you shall give me ten Pounds for my Horse, and you

you do give me one Penny or more in Earnest, which I do accept, this is a perfect Bargain, and you may recover the Horse by an Action of the Case, and I the Money by an Action of Debt, &c. *Noy's Max. p. 87.* Also the Money given for Earnest shall be taken as part of the Sum agreed to be paid. *1 Saund. Rep. 320.*

*Vid. Appendix,
pag. 3.*

If I say the Price of a Cow, or other Thing, is four Pounds, or the like, and you say you will give me four Pounds (according to my Words) and do not pay me presently, you may not have her or it afterwards, except I will, for it is no Contract: But if, as before, you go presently to telling your Money, if I sell her to another, you may have your Action on the Case against me, tho' I refuse the Money, for your present Tender has made the Contract perfect.

*Contract: per-
fected.*

It is also said, That if a Price be fix'd between Buyer and Seller, for Goods or Wares, and it is then further agreed, that the Seller shall keep the Thing or Wares till the Buyer can go home to fetch his Money, that this is a good Bargain, and that the Seller ought not to vend the Wares to any other: And that upon Payment or Tender, and Refusal of the Money agreed on, the Buyer may take or sue for the Thing bought. *Dyer, 29, 30. Plowd. 432.*

*Liberty to the
Buyer to go
Home for his
Money.*

And though it may be supposed that the Buyer shall have a reasonable Time to go Home, yet a certain Time agreed on

on would be better; however he ought to come again with convenient Speed.

Again it is said, If I sell my Horse for Money, I may keep him until I am paid, but I cannot have an Action of Debt till he be delivered: Yet the Property of the Horse is by the Bargain in the Buyer; so that if he do presently tender me my Money, and I do refuse it, he may take the Horse, or have an Action of Detainment.

And in this Case it is said, That if the Horse die in my Stable, between the Bargain and the Delivery, I may have an Action of Debt for my Money, because by the Bargain the Property was in the Buyer. *Noy's Max. p. 88.*

Horse sold, Advantage in the Seller.

Property in the Buyer.

Horse dies before the Money paid in the Seller's Stable.

CHAP. III.

Of Executory Contracts, &c.

*Vid. ante 7.
Appendix 2, 3.*

AS a Contract must be complete and perfect, so it must be duly pursued and perform'd: And if any Thing be left 'till another Time, as Part thereof, such Contracts be executory Contracts, and have Reference to such Thing to be performed, paid, or Delivered, pursuant to the Contract or Bargain.

To pay for Corn as it is fetch'd. Therefore if a Contract be for twenty Bushels of Corn at a Price, and that the

the Buyer shall pay for them as he doth fetch them, this must be pursued, and the Party must pay for it as he doth fetch it, or the Seller may refuse to deliver it. *Dyer 30.*

So if one buy Wares of me for 20 *l.* To be paid to be paid when they are delivered; when deliver'd. when they are delivered, and not before, the Action will arise upon it. *Fitz. Debt, 56.*

And if it be, that the Seller shall Delivery at bring and deliver them at such a Place, the same place they must be delivered at that Place; agreed on. and so of the like.

But where the Contract and Bargain is intended to be instantly executed, and the Seller expects ready Money, and nothing in the Contract to the contrary; in such Case if any Man offer to take away my Goods, not having paid or tender'd me the Price, I may lay my Hands upon him, and rather beat him, than suffer him to take or carry them away. *Noy's Max. 93.*

Yet where the Price is set, and the Buyer takes the Thing into his Possession by Consent or Agreement, where no Money is paid, Earnest given, or Day set for Payment, the Bargain is good, and the Property of the Thing alter'd, and the Seller may sue for the Money when he will.

Also, where a Trades-man delivers a Bargain upon Thing to, or for another, at his Request or Sending, and he takes the Thing into his

The Trades-Man's Lawyer, and

his Hands, or it come to his Use, though no Price is agreed upon, the Contract it seems is good by the Implication of the Law; and these be Contracts upon Trust or Credit.

And if it be Wine, or any such like Thing, the certain Price whereof is known, and set by Law, then the Seller may sue for the Money in certain. *Trin. 3 Jac. B. R.*

But otherwise the Plaintiff shall recover, by Implication of Law, as much as the Thing was worth, and he must set out what the Thing was worth; but more to this Purpose followeth in Chapter the Fourth.

Note, It is said, That every executory Contract, and every Debt (that is not upon a Record, or upon a Specialty, or for Rent upon a Lease) which may be turn'd into Damage, as upon an Account, or upon a Buying, or upon an Agreement, hath an implied Promise in it; and the Plaintiff may set forth that the Defendant did promise it, and make the Debt, or first Cause, the Consideration of it. 4 Co. 92.

Note, From what has been said, it appears,

1. That if one sell me a Horse, or other Thing, for Money, or other valuable Consideration, and the Thing is deliver'd, or to be deliver'd to me at a certain

certain Day, and by our Agreement a Day is set for the Payment of the Money.

2. Or all the Money is paid in Hand.

3. Or Part only of the Money is paid in Hand. *Vid. Append.*

4. Or I give Earnest-money, albeit it be but a Penny, to the Seller.

5. Or I take the Thing bought by Agreement into my Possession, where no Money is paid, Earnest given, or Day set for the Payment.

In all these Cases there is a good Bargain and Sale of the Thing, and the Property is alter'd.

1. And in the first Case, I may have an Action for the Thing, and the Seller for his Money, after the Day set.

2. In the second, I may sue for, and recover the Thing bought.

3. In the third, I may sue for the Thing bought, and the Seller for the Residue of the Money.

4. In the fourth Case, where Earnest is given, we may have reciprocal Remedies one against another.

5. And in the last Case, the Seller may sue for his Money.

Note, That in an Exchange of a Horse for a Horse, or such like, the Bargain is good without giving of Day or Delivery.

So that where neither the Money is paid, in All nor Part, nor Earnest given, nor Day set for Payment of it, nor the Goods or Thing deliver'd, no Action will lie for either Buyer or Seller; but if of Day or Delivery.

if one of these be perform'd, it seems the Bargain is perfect, and the Action may well lie. *Noy's Max.* 90.

Tet observe further,

That by the Stat. of 29 Car. 2. No Contract for the Sale of any Goods, Wares and Merchandizes for the Price of ten Pounds Sterling, or upwards, shall be allowed to be good, except either the Buyer shall accept Part of the Goods so sold, and actually receive the same, or give something in Earnest to bind the Bargain, or in Part of Payment; or that some Note or Memorandum in Writing of the said Bargain be made and signed by the Parties to be charged by such Contract, or their Agents thereunto lawfully authorized.

And lastly observe, That the Property cannot be altered contrary to the Intent and Meaning of the Owner.

See more Observations from this Statute, Chapter the 12th in the Conclusion.

C H A P.

CH A P. IV.

*How we may be charged by others Vid. Appendix,
p. 4. to p. 14.*

Contracts.

NOW as we may be charged by *How far a*
the Contract of another, it may *Man may be*
here be necessary to set forth by whom, *bound by others*
and how far. *Contract.*

Therefore know, that a Man may in *By his Wife or*
many Cases be chargeable upon the Con- *by his Servant.*
tract of his Wife, or of his Servant, as
if it had been his own Contract, As

If a Wife sell her Husbands Goods by
some former Authority from him, or if
he consent afterwards, or where he doth
not disagree to it during his Life, the
Contract it's said is good, especially in
the two last Cases. 27 H. 8. 25.

So where the Wife doth use to sell
and manage the Estate of the Husband
without him, or the Things sold be
such as are proper for a Wife to sell, as
Eggs, Butter, Cheese, &c. There her
Contracts will bind him.

So if the Wife buy any Thing by *By the Wife's*
Authority general or special from the *Buying.*
Husband, as where she hath used to
buy for him, or hath a special Order
from him, or without Order or Au-
thority, if it be for her necessary Ap-
parel, the Husband will be chargeable
herewith. *Dyer 234. Hist. 105.*

Vid. Append.
p. 4. 5, 6, 7.

Some say if she buy any Thing (except necessary Apparel) for her self or Husband, without any Authority either General or Special for him, this Contract will not bind him, although the Thing bought be spent in his House. But if he agree to it afterwards, that will bind him. 1 *Roll.* 351. *F.N.B.* 120. 1 *Mod. Rep.* 9. 126, 141. *Vent. Rep.* 1. 42. 2 *Keb.* 554. *Litt. Rep.* 307. 1 *Sid.* 425. *Vid.* 1 *Levin.* 25. 2 *Levin.* 16. See

Stylé's Prac. Reg.

But if she make any Warranty to such her Contracts, it will not bind the Husband without his special Agreement, to make good the Warranty. 20 *H.* 6. 22. 27 *H.* 8. 25.

Wife's Warranty.

Vid. post. 36.

It is said in *Trin. Term*, 1 *Jac.* 2. A Tradesman brought an Action against one Mr. Gerard, (whose Wife and he were parted) upon a Promise for Goods sold after the Parting to her, she having a separate Maintenance, It was the Opinion of the Court, That if a Tradesman who sold them Goods, when they liv'd together, trust her after, the Husband shall be liable, unless he gives such Tradesman particular Notice not to trust her. Wherefore it is now a-days usual to give Notice, either by Printing or in Writing, when a Man is not willing his Wife should be trusted after her Elopement. *Vid. Mod. Rep.* 9. 124, 142.

By the Servant.
By the The Contracts of a Servant may also bind the Master, especially where the
Servant

Servant is known, and a Common Bailiff to his Master, and doth use to buy for him, and doth mention his Master's Name in the Bargain, and doth buy as for him. Also where the Servant hath had a former Authority from his Master

so to do, and doth in the Bargain mention his Master's Name, and doth buy as for him; this Contract is said to be good, and shall bind the Master, albeit the Master never have the Thing bought, nor Notice of it. For if any Servant of mine, by my Appointment, buy any Goods for me, or to my Use; by this the Property of them is in me, as if I had bought them, and I must have them: And in such a Case it's said any Friend by my Order may buy as a Servant. *Trin. 9 Jac. B. R. Moor's Case.*

Also where the Thing bought without special Authority, doth come to the Master's Use; or he doth agree to it after the Buying, though it come not to his Use: These are said to be good Contracts (although the Servant doth not use his Master's Name.) But if the Thing bought in these Cases do come to the Master's Use, and he doth not agree to it, it is otherwise, and especially if the Things be unnecessary. *F. N. B. 62, 120. Doct. & Stud. 136. Dyer 230, 237.*

If my Servant by my Command sell my Horse, the Money is to be paid to me. *Hetl. 176.*

C

So

Servant's Command, &c.

Vide Appendix p. 4-5, 6. Post. 36, 37, 71, 72, 148,

149.

Servant's general Authority.

So where the Servant hath a precedent Authority, General or Special, from the Master to sell the Thing, it will bind the Master, though he have no Notice of the Sale, or receive not the Money of his Servant.

By the Master's Agreement.

So where the Master, after Sale, does agree to do it, though the Servant had no Authority to sell.

Common Bailiff.

So where the Servant is a common and known Bailiff, and doth use to buy and sell for his Master.

And if my Wife or Servant use to buy or sell, if she or he sell my Horse, or exchange my Ox for Corn, that cometh to my Use, this, it's said, is good; and the Party that contracted with her or him is not bound to aver or maintain that she or he had Authority from me. *Dyer* 230. *Noy M.* 94 *Noy Rep.* 110. *Finch Ley* 66. *Bro. Cont.* 24.

Servant as general Order may buy of whom he will.

Yet it's said, that if I send my Servant to a Market or Fair, to buy any Thing for me, and do not tell him of whom he shall buy it, in this Case of whomsoever he buy it, I shall be chargeable for the Money, &c. But if I bid him buy it of one Man, and he buys it of another, I shall not be chargeable for this. *Doct. & Stud.* 137.

But this seems to be meant of some unknown Servant, or else where the Seller is privy that he had other Order. Yet if I make use of it, and send it not back, I must in Reason pay for it; for this

this seems to be my Agreement, and I can be but once charged for it. *Idem* 138.

Note, An Action was brought against the Master and Servant, for the Servant's riding over the Plaintiff with an unruly Horse, though the Master was absent. 1 *Vent.* 295. 2 *Lev.* 172.

If I bid another deliver to my Servant what he shall call for, and I will pay him, in this Case I shall be chargeable for whatsoever my Servant doth fetch. *Co.* 8. 146.

But if I order my Servant to sell my Goods, and he doth sell them, and in selling warrant them, though the Sale bind me, yet it's said the Warranty *post* 36. shall not. 11 *Ed.* 4. 7.

Again, If I command my Servant to sell a thing that is defective generally to whom he can, no Deceit lieth against me. But if I bid him sell it to such a particular Man, and he doth so, I am liable to a Deceit. *Noy's Max.* p. 95.

If my Servant on his own Mind borrow or receive Money in my Name, I shall not be charged; but it is otherwise if it be done by my Command, or come to my Use by my Assent. *Noy's M.* 93, 94.

So if my Servant that keeps my Shop, or uses to sell for me, shall give away my Goods, I may sue the Receiver. *Noy's Max.* p. 95. *Noy's Rep.* p. 110. *Bro. Den.* 56.

Note, It's said, If a Servant, &c. make a Bill without Seal, testifying that he

C 2

hath

To deliver what my Servant calls for.

Servant's Warranty binds not the Master, post 36.

Deceit against Master for Servant's Sale.

Servant borrows in my Name.

Servant gives away Master's Goods.

Servant binds himself for Master's Debt.

hath bought Wares to the Use of his Master, and by this doth promise himself to pay the Debt, yet it is the Master's Debt; but an Action of the Case may lie against the Servant for his special Promise. *Dyer 233.*

Q. How 'twould be if he should seal and deliver the Bill, and if the Master may not avoid the Debt.

CHAP. V.

Of the Sale of one and the same Thing twice by the first Owner, the one immediately after the other; and what sort of Sale is requisite to alter the Property of Goods, &c. tho' they have been stolen.

*Bargain to me,
and Sale to another.*

FIRST, If I sell or set a Price of a Thing in a Shop, Fair, or Market, and the Buyer or Chapman goes presently to telling his Money, and in the mean while I sell the same thing to another; the first Chapman after Tender of his Money, and Refusal to accept, may take the Thing, or otherwise recover by Action, as before observed. *Dyer 218. Co. 11. 48. Plow. 308.*

Sale on Condition and Day given, and Seizure and second Sale before the Day.

If I sell my Horse first to one only on Condition, that he pay me five Pounds such a Day, and before the Day and Money paid I seize him and sell him to another, the second Contract is void, and

and therefore the first good; and a Man may not sell that which is not his own, and there was no Appearance but that the Buyer might have performed the Consideration at the Day. *Plow. 432. Co. Litt. 309 Perk. 15.* And the Buyer must also pursue his Consideration before he may bring his Action. *9 H. 7. 13.*

Yet perhaps the Seller might, upon Delivery per-
Delivery of the Horse, have an Action *scilicet the Bar-*
against the second Buyer for the Money. *gain.*

For it's said if I take a Horse of ano- *Vide Appen-*
ther Man's, and sell and deliver him, and *dis p. 3.*
afterwards the right Owner take him
again before the Money be paid; yet I
may have an Action of Debt against
him that bought the Horse for the Mo-
ney, because the Bargain was perfect by
Delivery of the Horse, and the Buyer
ought to beware. *Finch Ley 45. Co. 3.*
20. Noy's Max. 89.

But in this last Case the Buyer may *Action for De-*
have an Action of Deceit against the *ceit.*
Seller, for selling of another Man's
Goods as his own, knowing them to be
the Goods of another; or if he affirm or
warrant the same to be his own at the
Time of the Sale. *Cro. 1st. 44. 2d. 496.*
Co. 4. 18. 18. Noy's Rep. 124. Tel. 114.

If *A.* sell Sheep to *B.* as his own Goods
saying that they are his own, whereas
they belong to *D. B.* may have an Acti-
on against *A.* for this Deceit, before *D.*
hath seized the Sheep or interrupted
him, because they are things transitory,

and therefore the Action lies before Interruption; for if he should stay till D. interrupted him, A. may be dead before, or other Disadvantage may happen: adjudged *Pasch. 16 Jac. B. R. inter Lister & Farnace. Cro. Jac. 474.*

*Concerning
Goods stolen,
and sold.*

And since this has Relation to Goods, to which the Seller hath no Right, or hath stolen and sold them again: We will here take Notice of such Acts as are requisite to alter the Property of such Things, and make the Sale good to the Buyer.

Now it's plain, That if a Man sell his own, if the Contract be made out of any Fair or Market, it's good enough, or if the Thing be sold by his Wife or Servant in manner aforementioned, it will change the Property, and pass the Thing sold to the Buyer.

So also a Sale in a Fair or Market, on the Fair or Market-day, be the Goods whose they will, living or dead, nay although they were stolen, is good to change the Property and settle them in the Buyer, and to bind and bar all Parties, if it be made according to the Rules or Ceremonies following. The Sale must be in a Fair or Market, and the Contract or Bargain also must be made there. *Dyer 99, 121.*

*Sale in Fair or
Market.*

For it's said, That if one buy stolen Goods the Day before the Fair or Market, and give Earnest, and then it's agreed that they shall be brought into the Fair

*Sale before the
Fair.*

Fair or Market the next Day, and there pays his Money and Toll, this is not good. *Co. 5. 83.*

It must be for a Consideration, otherwise it's a Gift. *Inst. 2. 713.*

The Sale must be *bona fide*; for if there be any covinous Agreement made between me and another, to sell the Goods of my Neighbour, or of a third Person, in a Fair or Market; or if I sell them to one who knoweth them to be my Neighbour's Goods, or the Goods of another Person; this will not alter the Property, nor conclude him, because the Buyer knew of a former Property. *Co. 3. 78. 5. 83. Noy's M. p. 90.*

The Sale must be in the Day-time, *sale in the Day-time.* between Sun-rising and Sun-set. *Inst. 2. 7. 14. Vet. Lib. Intr. 327.*

It's said also the Sale must be on a *sale on Working-day*, and that a Sale, though *ing-day* in a Fair or Market on a Sunday, is not good to change the Property. *Dyer 12. Co. 5. 83.*

And *Note*, That every Day in the *On Sunday in* Week, except Sunday, is a Market-day London, *for* by ancient Custom of the City of *Lon- some things as the Shop.* don, in every Man's Shop, of such Things as are usually bought and sold there: And some say Sundays is good in *Lon-* don, although forbidden by Statute. See *Old Book of Entries, 317. p. 1. 606. p. 1. Mich. 35 H. 6 33.* and there Sundays are pleaded. Also see *Compleat Solicitor, p. 405, 406.* But this seems not to be allowed.

Also the Sale must be in an open Place, and in the usual and proper Place for Sale of such Things, as Place in a Goldsmith's Shop, Cloth in a Draper's Shop, (and not in a Scrivener's) and that openly, not behind the Doors or Curtains, not in the Ware-house or Back-house, nor any other private Way, such private Sales, not being allow'd: For it is intended that he that passeth in the Street may see the Thing sold. *Co. 83. Co. Inst. 713. Doct. & Stud. 149.*

King's Goods.

Also they must be the Goods of a Subject, for such a Sale of the King's Goods is not good. *Co. Inst. 713. Plowd. 243.*

Goods in Custody of the Law.

Neither must the Goods be in Custody of the Law. For if one steal my Goods, and the King's Officer seize them, and after he or another sell them in a Fair or Market, yet if I prosecute the Felon, and thereby he is attainted: In this Case I shall have my Goods restored, and the Sale will be naught. *Co. Inst. 2 Part 714.*

Sale of a Horse stolen.

If the Thing sold be a Horse-Beast, (that hath been stolen) many Circumstances are required to bar the right Owner, and to change the Property.

Must be ridden or stand for an Hour.

For he must be either ridden, led, walk'd, driven, or kept standing by the Space of one Hour together, at the least, between ten of the Clock and Sun set, 2 & 3 *Phil. & Mar. 7. and 31 Eliz.*

In the Fair or Market.

This must be in an open Place in the Fair or Market, and where Horses are com-

commonly used to be sold, and not within any House, Yard, Backside, or other private Place.

All the Parties to the Contract there *Toll taken, or present in the Fair or Market, must Book-keeper.* come together with the Horse to the Toll-taker or Book-keeper.

The Book-keeper must write down *Must write the* in his Book the Parties Names, Sur- *Parties Names,* names, and Dwelling-places, the Co- *&c.* lour and one special Mark at the least of the Horse.

Toll must be paid if any due, other- *Toll paid.* wise a Penny for the Entry.

If the Book-keeper, or other Officer of the Fair or Market cannot take upon him the perfect Knowledge of the Seller, and of both his Names and Place of Dwelling: Then the Seller must bring to the Book-keeper or other Officer of the Fair, *&c.* one sufficient Person to be a Voucher, and to testify that *Voucher.* he knoweth the Seller's true Name, Trade, or Place of Dwelling.

Also the Christian Name, Surname, *Names and* Mystery and Place of Dwelling, both *Price to be* of the Seller and Voucher, if any be, *entered.* must be enter'd in the Book, with the true Price given for the Horse.

And if the Book-keeper, Officer, or Voucher shall testify their Knowledge of the Parties, as aforesaid; yet if it shall be proved, that no such Person as the Seller or Voucher was there at the *Pretended* Time of the Sale, in this Case the Sale is *Voucher.* said

said to be void; but all these Circumstances are not necessary, where a Man selleth his own Horse, to which no Man can pretend Right. *Trin. 10 Car. B. R. Barker and Reading's Case.*

Yet it's said, if any stolen Horse, or Beast, shall be sold according to the aforesaid Circumstances, notwithstanding if the Owner, his Executor, or Administrator, or any other by his Appointment, do within six Weeks of the Felony done, claim, and, by two Witnesses within forty Days after, prove his Claim, and that the Horse was his within six Months before the Claim, before some Justice of the Peace, in or near the Place where the Horse is found, and shall pay, or offer to pay so much Money as the Buyer gave, or the Buyer will depose, before the Justice of Peace, he gave for the same, the Property is then saved to the Owner, and he may either take him or have Detinue, Replevin, or other Action for him. 13 *Eliz. Co. Inst. 2. 715, 716, 717, 718.*

Thus much concerning the Circumstances in Law necessary to alter the Property of a stolen Horse, &c. sold in a Fair or Market.

Seller getteth the Goods, again which were stolen and sold.

And again note, If my Goods be sold by another, according to the Conditions aforementioned, and after the Seller getteth them again; in this Case I may take them from him. 2 *Inst. 713.*

Also if Goods be sold, not having the *Stranger* ^{no} said Conditions in them to bind a ^{bound.} Stranger, yet the Sale is good between the Parties themselves. 2 *Inst.* 714.

And if they be thus sold, as before, ^{Property clear-} it will change the Property, albeit they ^{by altered.} be Goods of an Infant, Feme-Covert Ideot, one in Prison or beyond the Sea, or of an Executor or Administrator, in Right of their Deceased. *Dott. & Stud.*

39. *Plowd.* 243.

Yet it seems otherwise, if they be ^{Exception, if} sold by an Infant, (that is, one under ^{sold by an In-} one and twenty Years of Age, though ^{fant.} it be but few Days) for it's not safe either to buy of, or sell to him: For some say, if he sell a Horse or Goods, and deliver it with his own Hands, he may afterwards avoid his Contract; and if he give Earnest for a Horse, he may either force the Bargain or refuse it, and recover his Earnest again; and it's said, if he buy Wares in a Way of Trade, and get by it, yet this will not bind him. But this seems to be of an Infant who buys and sells for himself, for it may bind his Master as before. 26 H. 8. 2. 2 *Cro.* 494.

Note, It is said, That if a Man sell ^{Two Horses} my Horse with one of his own for 10*l.* ^{sold, and one} and I take mine again, yet he shall re- ^{taken again.} cover all the Money, because such Action may not be apportioned. But the Buyer shall have his Counter-remedy against the Seller. *Noy's M.* 89. 7 H. 7. 4. 12 H. 8. 13. And

*For suffering
bought Goods
to lie in the
Seller's Shop,
&c.*

And *note*, If one buy any Thing of me, and do not take it away in convenient Time, but suffer it to lie upon me, to prejudice me, I may have an Action of the Case against him. *Fitz.* 48. *B.* 13: *H. 4. Act. on Case* 48.

CH A P. VI.

Of such Bargains and Contracts as are said to be conditional, &c.

IT is to be observed, that some Bargains and Contracts be conditional, and have Reference to Something else. *Plowd.* 130, 140, 338. As where I agree, That I will give ten Pound (or so much) for a Horse; if my Brother or if my Neighbour shall say the Horse is worth so much. Now this Contract is perfected after my Brother or Neighbour have affirmed the Horse to be worth the Price proposed; and the Law will allow a reasonable Time, for the Determination.

But if the Party to whom the Reference is made, die before Judgment given, the Contract is determined. 14 *H. 8.* 19. *Plowd.* 6.

The Case is much the same where I agree to give so much for a Horse as *A. B.* shall judge him to be worth; this Action is compleat when *A. B.* hath given his Judgment. But

*Sale on Condition, if one
shall say 'tis
worth so much.*

*if A. B. shall
judge him
worth so much.*

But it seems the Horfe must be delivered, or Money paid before the Property alter, or before any Action will lie for the Money. *5 Co. 83. Co. 10. 76, 102. Dyer 98, 356.*

So if the Bargain be, that the Buyer shall see the Thing, and if he like it when he hath seen it, for so much, he shall have it. In this Case when he hath agreed to have it at the Rate, or takes it away, or pays the Money, the Contract is perfect, and not before; and he cannot afterwards by Disagreement avoid it, when he has once declared his Liking; and if he once upon Sight dislike it, the Contract is determined. *17 Ed. 4. 1. 18 Ed. 4. 16. Dyer 99. Vide 3 Levin. 363.*

So if the Bargain be, that I shall give you ten Pounds for such a Wood, if I like it upon the View; this is a Bargain at Pleasure upon my View; and if the Day to view be set, though I disagree before the Day, yet if I agree at the Day the Bargain is perfect, although afterwards I don't agree:

Yet in this Case it's said, I may not cut the Wood before I have paid for it; for if I do, an Action of Trespass will lye against me. *Noy's Max. p. 88.* And if you sell it to another, then I may have an Action on the Case against you. And consequently the Seller may have an Action against me for the Money, after I have declared my Liking of the Wood.

Sale of Wood, if the Buyer like it such a Day, on View thereof.

*Wood sold to be
taken at the
Appointment
of the Seller.*

But if I buy a hundred Loads of Wood, to be taken in such a Wood, at the Appointment of the Seller; In this Case, if the Seller upon Request, will not set out the Wood unto me, it's said I may take them, or I may sell them. But if a Stranger cut down any of the Trees, I may not take them, but may supply my self of the Residue, or have an Action of the Case. *Noy's Max.* 88.

*Horse sold for
Corn.*

If one sell me a Horse for ten Pounds, on Condition that I pay him this ten Pounds in Corn; In this Case it's said I must pay him in Corn, or he may have an Action of the Case for his Remedey. *Fitz. Debt* 68.

*Sale of the best
Horse in the
Stable.*

If one sell me the best Horse in his Stable, and there be more Horses than one there. In this Case I must make my Election before I can have Property *Keilw.* 77. 69. And yet it's said to be otherwise, if there was but one Horse there.

CHAP. VII.

How the Words of the Parties contracting shall be taken.

*Obscure
Speeches.*

IN all Contrasts he that speaketh obscurely or doubtfully, is said to speak at his own Peril; and such Speeches are to

to be taken strongly against him. *Noy's Max.* 91.

And it's said that the Meaning of the *Meaning of the Parties re-*
Parties is much more regarded, than the *Parties re-*
Form of the Words. And therefore if a *garded.*
Sale be of Tods, Pounds, Bushels, Yards, *Weights and*
or Ells of any Thing; that it seems *Measures taken*
shall be accounted, measured, and *according to*
reckoned according to the Custom of *common accep-*
the Place, and not according to the *tance and Cu-*
Statutes, and according to the common *stom of the*
Acceptance of the Words in the Place *Place.*
where they are spoken. *Keilw.* 87. 27
H. 8. 14.

So if one promise twenty Pieces for Twenty Pices.
a Thing, it shall be expounded twenty
Pieces of Gold, according to current
Value. And if one promise me a Cup
of Wine, yet I shall have but Wine in
the Cup, and not the Cup also. *Bulst.*
Part 1. 175.

Also it's said, if the Contract be for Twenty Barrels,
twenty Barrels of Ale, or ten Pottles
or Cups of Wine, the Buyer shall not
have the Barrels nor Pottles in either
Case. But if it were for Hogheads or
Firkins of Wine, there he shall have the
Hogheads and Firkins also. 17 *H. 8.* 27.
Bro. Contract 4.

And note, That the Intent of the *Intent of the*
Parties to the Contract, doth much rule *Parties ruleth.*
therein, and is more heeded in Law
than the Form of the Words; and there-
fore if they do agree upon a Thing and
the Words spoken, or written, be not
apt

apt and proper to declare their Agreement; yet if their Minds can be gathered by it, it may be good enough.

Common Acceptance of the Place.

And the Words shall be taken according to the common Acceptance of such Words in the Time and Place where they are spoken; and if any thing therein be uncertain for Time, Place, or otherwise, it may be made certain by a necessary Relation to other things. See more of this, Chapter 9.

Words uncertain strongest for the Buyer.

Also that in Case of a doubtful and uncertain Contract, where there is a Sale made, the Words shall be taken most in Favour of the Buyer, and most against the Seller.

Contract considered together must be performed according to the Substance.

That the whole Contract may be considered together as an intire Agreement, or in the Parts thereof, as each may help the other; and in both, the Intent and Meaning of the Parties to be pursued and performed, not in the Letter, but in the Substance of it. For if it be contracted, that Money shall be paid in Gold, Payment in Silver is not a Performance, nor will the Acceptance of it, by the other amend the Matter. *Relv.* 87. But no Doubt the other may have Counter-remedy.

Strikes of Corn.

If an Agreement be in *Lincolnshire*, for eight Strikes of Corn, this shall be taken for a Bushel of Corn; for eight Strikes there make a Bushel, and so of the like. *Bulst.* 1 *Par.* 135.

If

If the Contract be for twenty French French Crowns, this shall be taken for six Pound, and French Pieces shall be taken for French Crowns known here. *Cro. 1. 141. Vid. Pal. 407. N. Lutw. 148. 2 Salk. 446. 1 Salk. 9, 22, 25. Post 47.*

Appendix p. 14.

And so of the like upon Promises and other Agreements, which are not so much related to buying and selling, of which more hereafter in Chapter 9.

CH A P. VIII.

Of Deceit and Warranty in Buying and Selling.

IF one sell me another Man's Goods ^{*Selling another Man's Goods knowing*} for his own, knowing them to be none of his own, and they be afterwards taken from me, it is a Deceit, and I may have an Action against him. *See before Chap. 5.*

But it is said to be otherwise if he do not know it; therefore it is always alleged against him in the Declaration that he knew it, and affirm'd himself to be the Owner, for it's said (knowing) is not enough. *Co. 4. 18. Cro. 2. 196, 197. Farudam and Leicester, Cro. 1. Trin. 32. Car. 2. Balwell versus Horne.*

If one sell me corrupt Victuals, Bread, ^{*Selling corrupt Beer, Apothecaries Drugs, Raisins, or Food, &c.*} other Things for Food or Physick, and know it to be corrupt and unwholesome, I may have an Action for the Damage done

D

The Trades-Man's Lawyer, and

done to my Health. So it is if one sell me Wine mixt with Water. *Keilw.* 91.

Yet it is said, if the Buyer, or his Servant shall see and taste the Viſuals or the Wine, he cannot then have an Action of Deceit. *Cro.* 2. 196. *Bridg. Rep.* 127.

Yet this seems to be clear of dead Meat and Wine; for by the Law no Man may sell corrupt Viſuals.

But of live Cattle I may not have an Action without Warranty. *Keilw.* 91. *Dyer* 75.

Dead Meat.

Yet it is said if one sell a Horse to *Unsound Horse.* me, and know it to be unsound, albeit he do not warrant him found, yet I may have an Action. *Cō.* 4. 18.

But this is since again contradicted, and that no Action will lie without Warranty. *Bulſtr.* 3. 95.

Now it is plain, that if any one sell me any living or dead Thing, and warrant it found and right; if it be not so, I may have an Action on the Case, in the Nature of a Deceit. *Keilw.* 89. *Tel.* 114. *Noy's Rep.* 124.

So if one sell a Horse to me lame or diseased in his Legs or Eyes (and know it) and warrant him to me found, or if the Horse be sick, and he know it, and yet warrant him found, I may have an Action. And here it seems the Law is the same, whether the Seller know his Faults or not. *F. N. B.* 94. 7 R. 2. 42. *Reg. Orig.* 108. 11 H. 6. 18.

But

But it's said, if I deceive my self, and take his Warrant, for what I see to be otherwise, as if he warrant the Horse, and he hath Splint, Spavie, Boyl, or is lame; or that he hath both his Eyes, and it's plain he has but one, no Action will lie: So if he warrant that red, which I see to be blue. *Cro. 2. 386. Bulstr. 3. 94. 95.*

But this is questioned; for if the Warranty be made at the Time of the Sale, an Action, it's said, will well lie. *Cro. 2. 631. F.N.B. 94. Pasch. 3. Jac. B. R. int. Goldsmith and Prestem, of the Sale of a lame and foundred Horse. But 'tis a Rule that the Warranty must be made at the Time of the Sale. Cro. Jac. 4. 196, 197. Bridgm. 127. Godb. 31. Firz. Decret. 24.* And as to a Horse being shouldered, or having Splints, the Action, it is said, lies; for these are not subject to the View of an unskilful Person. *Trin. 18 Jac. adjudged inter Dorrington and Edwards, being mov'd in Arrest of Judgment. But 'tis made a Quare of the Warranty of a Horse that is blind, 2 Rol. Rep. 5. Bridgm. 128. and a Diversity where he has no Eye, and where a counterfeit, false and bright Eye. Vide 2 Rol. Rep. 5.*

But where a Horse is sold without Warranty, and I do see and know he is unsound, 'tis most plain no Action will lie. *Style's Rep. 310.*

D 2 The

*The Warranty
must be made
by Owner.*

Ante 16, 19.

The Warranty, it's said, must be made by the Man that sells, and not by a Stranger, and upon a Sale by the Owner, and not by the Servant who sells my Goods; for no Action will lie against him. 11 *Edw. 4. 6 (sed quere.)*

But if a Thing be sold to my Servant for me, that am absent from it at the Sale, and the Seller warrant it, I may have Advantage of this, albeit it be about such a Thing as I might have discover'd, if I had been present. 14 *H. 6. 22.*

If my Servant sell my Horse, or other Goods, and he warrant it, and it hath a secret Fault, the Buyer can have no Action against me upon this Warranty; for the Master cannot, it's said, be bound by any Act of the Servant, but such as he doth agree unto, (yet see as before) *Chap. 4. Doct. & Stud. 138. Bridgman's Rep. 128.*

But if the Servant sell by Covin of the Master, and the Master agree to the Warranty, he may perhaps be chargeable with it, or (without Warranty) of a Deceit, if he order him to sell it to such a particular Man. *Keilw. 89. Vid. ante Chap. 4. Noy's Max 95. 8 Hen. 6. 53.*

If the Servant of a Taverner sells Wine that is corrupted, knowing it to be so, it's said no Action of Deceit lies against the Servant. *contra 9. H. 6. 53. b. vid. 1. Mod. 209.* but it lies against the Master who he did not command him to sell it, to any particular Person. *Ibid.*

Again

Again, it's said if a Goldsmith make Goldsmith's Deceit. Plate, wherein he mingles Dross, so that it is not according to the Standard, and sends his Servant to a Fair to sell it, who sells it for good Plate, according to the Standard; in this Case an Action of the Case will lie against the Master for this Deceit, because he made it on Purpose to deceive. *Cro. 2. 470, 471. 2 Rol. Rep. 28.*

But it's said, if a Servant be commanded by his Master to sell an ill Horse, and the Servant sell him for a good one, whereby the Servant is molested and troubled; yet he may not have such an Action against his Master. *Cro 2. 471.*

If my Servant counterfeit a Letter in my Name to *A. B.* desiring him to send me twenty Pound, upon Delivery; whereupon *A. B.* delivereth the 20 *l.* to my Servant. In this Case 'tis said *A. B.* may have an Action of Deceit against my Servant; but this will not bind me, unless the Money come to my Use, and I agree to it. *Doct. & Stud. 138.*

So if a Stranger procure a counterfeit Letter to a Servant of mine that hath my Money in his Hands, to pay this Money to him upon a pretended Debt I owe, or the like, and by this Deceit get the Money, I may have an Action of Deceit against the Counterfeiter. *Cro. 2. 223. Fenk. Cent. 8. Case 1.*

So that it seems Deceit will lie in all cheating Contracts, where one sells de-

ceitful Wares, or other Things, or by deceitful Measures, or use any Deceit; as where one doth sell me for good, and deliver me bad, or sells me unwholesome Bread, Beer, Wine, Meat, Drugs, or any thing that goeth into the Body, and may hurt it, or where one for my Money doth promise to deliver me that which is good, but doth not, and of the like; This Action, it's said, will lie, as before, without Warranty, if the Party selling knoweth of the Fault. *Dyer* 75. 6 *Ed.* 2. 6. *Keilw.* 91. 19 *H.* 6. 53.

But if there be an Affirmation or a Warranty in the Case, then is the Action more unquestionable, though he pretends he knew not the Fault. *Cro.* 2. 196, 197. *Kel.* 89. *Popb.* 143.

For if a Man sells a Tun of Wine, and warrants it to be sound and not corrupted, if it be corrupted an Action upon the Case lies. 11 *H.* 6. 18. And it's said the Action lies tho' he hath not paid for it, for the other may have Debt for his Money. *Bro. Garraty* 59.

It lies without Warranty if he knew it to be corrupt. 9 *H.* 6. 53. *Keilw.* 91. 2 *Roll. Rep.* 5. 1. *Roll. Abr.* 69. for it is a Warranty in Law.

False and sophisticated Wares.

And of false and sophisticated Wares or Merchandizes sold, no Action, it seems, will lie, if there be no Warranty in the Case. As if one sell me a Stone, and says it is a Bezoar-stone, but doth not warrant it to be so, &c. and of the like,

like. *Vid. Bridg. Rep.* 126. and *Popb.* 143. *Cro.* 2. 4, 470. *Dyer* 75, 76.

If a Man sells certain Packs of Wool with Warranty that they are good and merchantable, if they are all full of Moaths, an Action lies against him. 19 *Hen.* 6. 49.

So if he sells certain Bales of Green, and warrants them to be merchantable, whereas he knows them to be damaged, an Action lies against him. 20 *Hen.* 6. 35. adjudged. But if he affirms them to be good, and does not warrant them so, if false, it's said, no Action lies. *Pasch.* 1. *Fac. B. R. int. Candler & Lopus.* But if he knows it to be bad and affirms it good, Deceit lies. *Cro. Fac.* 469. 2 *Reh. Rep.* 5.

And if the Warranty extend to a Warranty of a Thing to come, as that a Horse shall carry me thirty Miles a Day, or the like, it seems it is not binding. *Finch Ley* 188. Yet it's said, that if the Seller shall undertake that the Thing sold shall endure good until such a Time, &c. the Buyer may have an Action of the Case against him, if it doth not endure, &c. *Owen's Rep.* 60. 7 *H.* 4. 15.

So if a Man sells certain Sheep to another, and warrants them to be found at the Time of the Sale, and that they shall continue found by the Space of one Year after, this is a good Warranty, upon which an Action upon the Case lies, though it be the Act of God, if they

continue sound; for this is not impossible. *Trin.* 39 *Elix.* B. R. *inter King and Brayne.* *Vid. Bro. Deceit* 29. *Fitz. Deceit* 23. *Owen.* 60. same Case and same Point.

So if a Man warrants such a Ship to return safe from such a Place; for 't's usual between Merchants to ensure them in such a Manner. *Trin.* 29 *Elix.* B. R. *Owen* 60.

So if one warrants that such a Man will live a Year; for this is the common Usage of Insurers among Merchants and others. *Ibid.*

Yet if A. promises B. for a certain Sum of Money for the Pasture of certain Sheep, in certain Lands for a certain Time, to preserve the Sheep in the said Land for the Time aforesaid, found and free from the Rot; in this Case, if the Sheep at the Time of the Promise were altogether unsound, infirm, rotten and corrupted, tho' they die after of this Rottenness within the Time aforesaid, yet is not this any Breach of the Promise, if he keeps them during the said Time; for the Effect of the Promise is only to keep them in the said Lands, and that the Land should not affect them with the Rot; for if before the Promise they were altogether rotten, it was not possible for him to restore them to Soundness, nor did he promise so to do, but only upon a Presumption, that if they were found

found then, that they should not be infected with the Rot, during the Time they should depasture with him. *Trin.* 1651. adjudged upon Demurrer between *Matrevers* and *Aland*. *Intratur Pasch.* 1651. in *Rotulo*. 57.

But no Action will lie upon Warranty of a Thing that is out of a Man's Power; as if a Man warrant that Seed shall grow, or the like. Yet if he say, it came out of such a Country, or such a Garden, and it is false, this perhaps may be actionable. 11 *Ed.* 4. 6, 7. from another.

Warranty of what is out of his Power.

Affirms it came from one Place when it came from another.

Deceit 23.

As to a Warranty upon a Sale that shall bind, observe as followeth.

1. The Warranty must be made by *Rules of Warranty*. the Man that sells, and not by a Stranger. 11 *Ed.* 4. 6.

2. By the Owner, and not by a Servant; and whether the Price be paid or not, is not material, because the Seller may have Debt for it. 9 *H.* 7. 21. 5 *H.* 7. 41.

3. It must be made at the Time of the Sale of the Thing, and not afterwards. For if the Sale be at one Time, and the Warranty afterwards at another Time or Place, although it be by the same Person, and the same Day; yet it is held to be void, and no Action will lie upon it. *Dyer* 75. *Cro.* 2. 4, 630.

Bridgman's Rep. 12. But if such Warranty were by Writing sealed, an Action of Covenant perhaps may lie upon it. 9 *H.* the Sale. 6. 53. 14 *H.* 6. 24. And

Warranty in Writing after

And where an Action upon Sale and Warranty was brought for two Oxen, the Jury found only for one, yet the Court upon a Motion in Arrest of Judgment held it good, and Judgment was for the Plaintiff. *Cro. i. 884.*

CHAP. IX.

Concerning other Contracts, Promises, Bargains and Agreements which are not so nearly related to buying and selling, and of their Considerations and Inducements.

THESE other Sorts of Contracts are sometimes about Houses, Lands, Rents, and such like Things, and sometimes about Goods, Cattle, and such like Things; and they are mostly executory, and about Matters to be done at some other Place or Time.

Yet in them too there must be a lawful and valuable Consideration or Recompence; for that is the material Cause of the Engagement by which it is made obligatory; otherwise they are but bare and naked Contracts, Promises, Bargains or Agreements, and so consequently no Action will arise upon them.

If therefore one promise to give me a Horse, build me a House, or do any such

Quid pro
quo.

Nadum Pa-
ctum
No Considera-
tion.

such like Thing by a Day, and I neither give him any Thing, nor promise him any Thing for it, this is but a bare Bargain; and if he neither give me the Horse, nor build me the House, I have no Cause of Action, but the Promise is void in Law; so if I promise a Man ten Pound, because he is my Kinsman, or the like. *Plowd.* 130. 140. *Dyer* 30. 336.

But if there be any Thing to be done or given by me, though but a very small Matter, as a Penny or Pennyworth, or a Pint of Wine, to induce the Promise, it may be good. For, it's said, a Penny is as much obliging in a Promise, as 100*l.* Yet it is probable in such a Case a Jury will give Damage according to the Loss. *Cro.* 94, 98, 123, 125, 138, 194, 380.

Good Consideration

Again, the Consideration to induce a Promise must be lawful, and not evil in it self.

Consideration must be lawful.

For if it be to provoke, or further the doing of some unlawful Act, as in Consideration that one do kill, or beat a Man, or burn a House, or forswear himself, or be a Forefaller of Markets, or Maintainer of Suits, or the like; this will not be good; and so it is if the Cause be usurious, &c. *Cro.* 1. 113, 245, 246. *Sut.* 56.

Unlawful Consideration.

Or if it be in Consideration you will save me harmless in whatsoever I shall do; this is too general and large. 2 *Lev.* 174. *Cro.* 1. 195.

Or

Or if it be in Consideration, that a Man will do against his Office, as that a Sheriff or a Gaoler shall suffer his Prisoner to escape. *Co. 11. 53, 54.*

Or if it be against the Good of the Commonwealth, as that a Man shall not sow his arable Land.

Or if it be in Consideration that a Tradesman or Workman shall not use his Trade, or follow his Labour, by which he gets his Livelihood, or the like; yet if this leaving off his Trade be only for a certain Time, or as to some certain Place; in such Case the Consideration hath been held good. *Bulst. 2. 136. March 77, 120. Cro. 2. 596. 3 Levinz, 241. Cro. Jac. 326. Jones 13. 2. Rol Rep. 201. Aleyn. 67. same Point adjudg'd, and a Diversity taken where the Restraint extends to a particular Place only, and where 'tis general throughout England. Style 111.*

Again; If *A.* and *B.* play at Tables, and upon this in Consideration the Plaintiff promises to give his Mare to the Defendant if he wins five Games at Tables, and the Defendant promises to pay 5*l.* to the Plaintiff if he wins five Games, this is a good Consideration in Respect of the Hazard, tho' this is no lawful Game for any Person. *Inter Sutton & Jones per Cur. Intr. Mich. 9 Car. B. R. vide 2 Rol. 133. like Point 1 Keb. 216. and 1 Rol. Abridg. 28. Pl. 59.*

Like-

Likewise on the other Side, if the Consideration to induce the Promise be good; and the Thing promis'd to be done by the other Party in Lieu thereof be unlawful and evil in it self, no Action will lie:

As if one in Consideration of Money, *Unlawful Promise.*
U. promise to kill a Man, or beat him, or to commit Felony, or burn a House, or the like, as above is said to be unlawful in the Consideration.

For generally whatsoever (for the Consideration Matter of it) in the Consideration, will make the Promise void, the same in the Promise will also make the Consideration void.

If a Man makes a void Promise to B. and after a Stranger comes to B. and in Consideration that B. will relinquish the Promise made to him by A. he promises to pay him 10*l.* This is no good Consideration to charge him, because the first Promise was void. *Micb. 14. Fac. int. Bernard and Simons, put by Altham and agreed per Cur.*

And if Money or the like, be paid *Consideration* or deliver'd upon such unlawful Bargain, *given, recovered again.* the Giver may probably recover it again. *Co 1. 84.*

Also as well the Consideration, as the Promise, must be possible and certain, *possible. Promise possible.* and agreeing; for if they be impossible, incertain, insensible or repugnant, they are said to be naught. *Co. upon Litt. 207.* As if one in Consideration that another

ther will go to *Rome* in three Days, promise, or pay him ten Pounds.

And on the contrary, if another, for the Consideration of ten Pounds received, promise to go an impossible Journey, or do an impossible Thing; or if it be to do a Thing that afterwards becomes impossible. *Vid. Cook, ut supra.*

So also if they be incertain, insensible, doubtful or repugnant, as

If one promise another to save him harmless, and say not for what, or against whom. Or if one, for good Cause, promise to pay me Money in a short Time, &c. Or sell me a Horse for as much as I shall value him at, or for good Cause promise to forbear me his Money for a little Time. These Contracts are incertain and void, but if any Sense or Certainty can be made of them, they shall be good. 10 Co. 76. 102. *Dyer* 356.

Yet upon a Promise to give a Child's Part with his Daughter in Marriage, and at the Time of his Death to give her as much as to any of his Children, except his eldest Son, tho' a Child's Part is altogether uncertain, yet the other Part is certain enough, with an Averment what the youngest Son had. *Adjudg'd Trin 17. Jac. Silver's Case. Popb. 148. 2 Rol. Rep. 104.*

And if a Citizen of *London* promises a Child's Portion, this of it self is certain enough; for by the Custom there it

it is known how much each Child shall have. 2 *Rol. Rep.* 104.

If it be that he will give with her 20 *French* Pieces, it is good, and shall be intended 20 *French* Crowns, which are the common Coin of *France*, and here known. *Cro. Car.* 194.

Foreign Coin.
Vid. ante 33.

Upon a Promise to pay Money to *A.* by *C.* for Things sold to *B.* if *A.* shall not pay the Money, and no Time of Payment set, an Action lies against *C.* if *A.* does not pay the Money in a convenient Time. *Mich.* 42 and 43 *Eliz.* *int. Sadler and Hawks*, adjudged, 1 *Rol. Abr.* 27. *Pl.* 49. And it's said, it must be intended there was a Promise to forbear to sue *A.* in the mean Time. *Vide* 1 *Rol. Abr.* f^o. 15.

Forbearance
Vid. post. 39.

As to Forbearance *per paulum* tempus, 'tis no good Consideration. *Cro. Jac.* 250 *Cro. Eliz.* 19. 1 *Bul.* 91. 2 *Rol. Rep.* 368. *vide* *Cro. Car.* 241. *Sed vide* 1 *Sid.* 45. and *aliquo tempore* not good. 11 *Car. B. R. int. Tilson and Clark.*

Yet *aliquo parvo tempore*, averring a Time of Forbearance; good. 1 *Bul.* 41. *Style* 459.

As where *A.* being oblig'd to *B.* in an Obligation of 40 *l.* for the Payment of 20 *l.* and *A.* absents himself so that *B.* knows not how to come at his Debt, upon which *C.* a Stranger in Consideration of certain Herrings given to him by *B.* and that *B.* should assign the same Obligation to *C.* with a Letter

Consideration.

Letter of Attorney to put it in Suit, promises to pay the said 20*l.* this is a good Consideration to have an Action, tho' it was objected that the buying of Debts is against Law; but if that be void, yet the Gift of the Herrings is a Consideration. *Micb. 7 Car. B. R.* between *Michael* and *Carden*, adjudg'd; this being moved in Arrest of Judgment.

So if a Man in Consideration of a Surrender, and of 10*l.* paid, promises to do such a Thing, tho' the Surrender cannot be made, so that this Consideration is void; yet the Action is maintainable upon the other Consideration. 36 *Eliz. int. Cripps* and *Goulding*, adjudged. cited *Hill. 43 Eliz. B. R. Cro. Eliz. 149. Tel. 56, 57. 1 Mod. Rep. 284. per Cur.* and that Part of a Consideration which is impossible, void or against Law, need not be alledg'd. *Popb. 32.* and if alledg'd, need not be proved, for the Allegation was idle. *Cro. Fac. 127. See 1 Leon. 296. 2 Leon. 71.*

Impossible.

If a Contract be between *A.* and *B.* that *A.* shall do such a Work, and *B.* shall pay so much for it; but that *A.* shall not sue for the Money; this is repugnant and frivolous, and so void. But after *A.* hath done the Work, he may then perhaps have an Action for his Wages. 7 *H. 6. 44. 21 H. 7. 24, 50.*

Or repugnant.

Note,

Note, That if one Part of a Consideration be unlawful, repugnant, &c. yet if another Part of it be good and lawful, this may do well enough, and is sufficient to make the Promise good, for it may be divided. Co. 12. 102. Dyer

in part.

359.

So if the Contract be usurious, that Contract is, where more is taken or agreed to be taken directly or indirectly for the Loan of any Money, Wares, Merchandizes, or other Commodities whatsoever, than what is appointed by the Statute, that is, more than six Pounds for the Interest of 100 l. for one Year, or above that Rate for more or less. As if I owe one 100 l. and promise him Twenty; or ten more to forbear it six Months, it is naught. Trin. 20. Jac. B. R.

*Original Cui.
tract not usurious,
no Matter
afterwards can
make it so.*

But if the original Contract be not usurious, no Matter of Fact afterwards will make it so; and therefore for a Man, upon a Loan of Money, to agree, and so take his lawful Interest quarterly, or half-yearly, so much as it comes to, for the Time is not usurious. Cro. 2. 20.

So if the Agreement be for lawful Interest, and the Borrower do after pay Part of the Principal, and all the Use, within the Year, and the Lender receive or sue for it within the Year; this is no Usury, for no Matter after the first Contract can make it so. Hill. 7 Jac. B. R.

E

But

*Use to be paid
at the Begin-
ning.*

But if the first Contract be, that the Borrower shall pay his Interest at the Beginning, or before the Time, for more Time than is past, as within ten Days, or the like; this is a corrupt Contract.

Cro. 2. 26. 1 Bulst. 20.

*More taken by
Mistake.*

Yet if the Lender take more than is appointed, by miscasting, or some such Mistake, where the former Contract was not usurious, it is not within the Statute. *Trin. 22. Car. 1. Style's Reg. 241.*

It is said the taking of something in the By, as a Pawn for Security, will not make the Contract unlawful. *Trin.*

13 Car. 1. B. R.

Broker.

So nothing that is given to a Broker in the By will make the Contract usurious and unlawful. *Hill. 7 Car. 1. per Just. Bridgman.*

*Hoping for Be-
nefit by lending.*

And so where the Lender is not sure, but doth only hope for Benefit at the Will of the Borrower; this is not usurious. *Co. 5. 69.*

*Hazard upon a
Ship.*

Where a Man runs a Hazard to lose all, as to pay so much Interest upon the Return of a Ship by such a Day; and if it do not return by that Day, then to pay the Principal only, and if it never return, then to pay nothing; this is not usurious. *Cro. 2. 209.*

*Upon a Man's
Life.*

So to lend Money to be paid with Interest, if such a one be then alive; if dead, then less than the Principal. *Co. 5. 70.*

*Failer at Day,
double Usury.*

If one borrow six Pound of me, to be paid by a Day, and if he pay it not by that

that Day, then he shall pay me 12 *l.* this, it's said, is not an usurious Contract. *Bro. Obl.* 76.

Yet if a Contract be about Money *Apportioned*, partly usuriously lent, and partly not, the Contract is void for all; for it cannot be apportioned. 33 *H.* 6. 28.

But if the Bargain be directly so *Usury at choice* made, that the Party may either accept or refuse it, no usurious Contract can be grounded on it. *Hill.* 21 *Car.* B. R. *Style's Reg.* 74.

If the Contract be so, that in Truth *Usury is Detest of Statute*, 'tis not usurious, and yet made so that the Statute may be avoided, it shall be adjudged usurious. *Style's Reg.* 75. *Hill.* 21 *Car.* B. R.

Now if the Consideration and Promise be out of the former Exceptions, and be in their own Nature good, or indifferent, and not evil in themselves, or reckon'd so by the Law; the Bargains, Contracts and Agreements, to which they relate, are consequently good and perfect. And it matters not in what Form of Words they are made, so the Sense be certain and clear. *Plow.* 305.

As if one promise me 20 *l.* to do a Work, or when I have done a Work, or if I do a Work, or so as I do a Work, all or any of these are good.

So if one shall say to me, if you will do such a Work, or the like; and the Substance or Sense thereof is enough in Pleading,

E 2

Note,

Note, It's said if one do promise another 10*l.* to build a House, he is to have the Money first. *Bullst.* 2. 334. For if after he do not build, the other may recover in Damages. *Sed. quer.*

Good Consideration must import Gain to one, or Loss to the other.

The Consideration or Motive of the Promise that shall be said to be valuable and good, the same must import some Gain to him that makes the Promise (or to some other at his Request) or some Loss to him to whom it is made, or both; and yet it is said, that if there be in it any Loss, Labour, or Danger to him to whom the Promise is made, it matters not whether there be any thing of Gain to him that makes the Promise. *Brownl.* (1) 42. (2) 269, 274, 277. *Hob.* 6. *Cro.* 1. 194. *Godb. Rep.* 290. *Hard. Rep.* 71, 72. 1 *Ventr.* 9.

Note, And yet perhaps in a special Case the Goodness of the Work done, may supply the Consideration, and make the Party chargeable.

Consideration present, Good.

But again it is said, that the Consideration, Motive or Inducement of a Promise must be such as hath something in it present or to come; for in many Cases, and generally when it is past, it is not good: As

Consideration past.

Where I have formerly lent another twenty Pounds, and he some Time afterwards in Consideration thereof, doth promise that he, at the end of the Year, will lend me twenty Pounds for a Year, or pay me five Pounds; this, it's said

said, is not a good Consideration. *Owen's Rep. 144. Cro. 1. 885.*

So if one have just now sold a Horse *Promise by a third Person after Sale.* or Wares to another for a Price agreed on, and a third Person standing by after the Sale, say, If the Buyer doth not pay you, I will. This Promise will not bind; and so if it be upon a Loan of Money.

But the Promise that must bind a third Person must be made before the Bargain be past; yet if the Horse or Goods be not delivered upon the Bargain to the Buyer, but afterwards are delivered at the Request of the third Person, it may be good enough, if he promise as aforesaid; but this Promise must be in Writing, and signed: See after *Chapter 13. Bull. (1) 120. (2) 73, 75, 76. 12 H. 8. 11. Vid. 1 Vent. 311. 2 Vent. 36. 3 Keb. 756.*

If I request another to do a thing for me, and then make him no Promise, and after he tells me he hath done it, and then I promise to pay him for it; this is a good Promise and Consideration, altho' the Promise was not made with the Request. *Brown. and Goldb. 8.*

But it is otherwise where a Man doth me a Courtesie without any Request. *Courtesie done me without Request.*

If one, in Consideration that I have paid for him, at his Request 10 l. to C. at such a Day, doth assume to repay it when he shall be thereto required. *Promise by one because I had formerly, at his Request done something for it him.* This, it's said, is a good Promise, though

it be made a Year after I had paid the Money at his Request. *Cro. 1. 282.*

And it is said to be adjudged (where I do request B. to bail my Servant, and after I say to him, In Consideration that you have bailed my Servant, I will pay you ten Pounds such a Day) that this is good. *Brownl. (1) 7, 8, 73. Dyer 272. 1 Rol. Rep. 382. 3 Bul. 187.*

And so, In Consideration that you have married my Daughter at my Request, I will give you twenty Pounds. *Vide. Cro. 59. 1 Vent. 268. Cro. 1. 295. 12 H. 8. 112.*

So if I request one to solicit a Business for me, and after he hath done it, I promise ten Pound for it, this is good; for the Request and Merits are joined together. *Hob. 72. 128. Dyer 253, 272.*

But it is otherwise if it be a meer voluntary Courtesie. And it is said,

If one become Bail for my Servant, and after it is done I promise to save him harmless, no Action will lie. *Hard. Rep. 72.*

If I say to another to whom J.S. doth owe Money, If he do not pay you, I will pay you: Or if I promise to another 20 l. because he is my Kinsman or Acquaintance, or because he hath delivered my Friends Wares, or the like. This is but a bare Bargain, and no good Consideration. See Act of Frauds and Perjury. *Plow. 302, 309. Doct. & Stud. 195. Dyer 20, 27.*

But

Bailment of my Servant, at my Request.

Marrying my Daughter at my Request. Post 57.

Soliciting Business at my Request.

Bail without Request.

Bare Bargain, to promise to pay another's Debt without Consideration.

But if I say to a School-master, Teach *Consideration* such a one, and I will give you so much *good, though no* for your Pains; or to a Carpenter, Build *Benefit to the* such a House, and I will pay you so *Premiser.* much for it; or to a Man, If you will marry my Daughter; or to a Woman, If you will marry my Son, and they do so; this is a good Consideration and Promise.

And it is not considerable in these and such like Cases, whether he that doth promise, have any Benefit at all by it, if he to whom it is made have Loss, and did it at my Request. *Bulst. 2.*

279.

And it is given as a Rule, That if a *A Rule as to a* Marriage or Engagement by Suretiship, *Consideration* or the like, be by another, and this is *pass.*

done at my Request; and I do then in *Things done as* Consideration thereof promise to give *my Request.* Money, or do Something in Lieu thereof. *Post 100, 101.*

of, this shall be a good Consideration to give Life to the Promise, though it be past: *Relv. 45. 1 Vent. 262, 268.* But it must be in Writing under Hand: See after *Chapter 13.*

So if I as a third Person, have any *Third Person* Hand in the first Contract between two *promise for a* other, as in Loan of Money or Goods; *rather than is* and if I say before, or at the Time of the *credited at his* Contract, If he pay you not, I will, or *Request.* I pray let him have them, and then I after promise Payment, I shall be chargeable accordingly, without my Request.

E 4

But

But if after it is done, I say so, this Promise will not bind. *Bulst.* 1. 120, 121. 1 *Ventr.* 293. 311. 2 *Ventr.* 36.

Note, This must now also be in Writing under Hand.

And in these and such like Cases there must be a Demand made of the Debt, &c. from the Surety or third Person before the Action be brought against him. *Vide* 3 *Lev.* 411. 12 *H.* 8. 12. 44 *Ed.* 3. 21.

*Demand of a
Surety or third
Person promi-
sing before
Action can be
brought.*

Note, Also these Promises by a third Person, and upon Consideration of Marriages, &c. must be regulated according to the Statute of 29 *Car.* 2. for which see the Conclusion of this Chapter, and Chapter 13.

A Promise in some Cases where the Cause continues, or Part past, and Part to come, may be good.

As if one in Consideration that I have boarded him at his Request, and will after sojourn him a Year, doth promise me twenty Pounds for all; this is good for all, for here is a Time to come. *Trin.* 14. *Jacobi.*

*For boarding
past and to
come.*

So if *A. R.* boarded with me for a Quarter of a Year, and after *J. S.* in-treat me that *A. B.* may board with me a Year longer; and after, before the Year expired, *J. S.* doth promise me, that he will pay me for the Year, and for the other Quarter, due before, as much as it shall be worth. *Cro.* 1. 755, 756. *Dyer* 272. *Bulst.* 3. 187.

In

In this Case, because Part of the Consideration is executory, and all is not *Consideration* executed; it is said I shall recover for executed, &c. the Year and for the Quarter. *Trin. 14. Fac. B. R. Cotton and Westcott. 1 Roll. Rep. 381.*

And it's said, that if I promise one a hundred Pounds, in Consideration that he hath married my Kinswoman, Daughter, or Servant; That an Action will lie for this; for the Cause doth continue, *Mich. 8. Fac. B. R. and Mich. 4 Car. 1. B. R. Dyer 10. Eliz. 272.* upon Request of *A.* yet said to be reversed upon *Exam.* in Session.

And especially if it had been at my Request. *Cro. 59.* But these two last Cases are limited by the Statute to be in Writing, as you may see in the *Post. 95. 96. &c.*

Assumpsit that *B.* had bargain'd and sold to *A.* certain Tuns of strong Beer at his Request, *A.* promis'd to pay 4 *l.* per Tun upon Delivery, good Consideration and Promise, being at the Request of him who made the Promise. *Cro. Eliz. 715.*

The Son contracts with *B.* for Cheese for 20 *l.* 10 *l.* in Hand paid, and the rest to be paid at a Day after. The Son comes for the Cheese, and *B.* refuses to deliver it, after the Father comes and requests him to deliver it, and promises if the Son does not pay at the Day, he will; 'tis a good Consideration

sideration to bring an Action against the Father, if the Son does not pay. *Mich.* 41, 42. *Eliz.* B. R. *inter Sberwood and Woodward.*

If A. in Consideration that B. had sold to him such a Thing upon such a Day, then and there promis'd to pay him 10*l.* this Consideration is good, and continued at the Time of the Promise. *Pas.* 8. *Jacobi, Andrews Case, Moor* 367. *Pl.* 505.

Again, if a Man be indebted to another for Goods sold, and afterwards the same Day promises, in Consideration thereof to pay it at a Day to come, this is a good Consideration to make an *Assumpsit*; for the Continuance of the Debt is a Consideration continuing. *1 Rol. Rep.* 413. 14. *Fac. inter Hodge and Varvifer. Latcb* 150, 151. *per Cur.* because there shall be no Division of a Day.

So if he makes such an *Assumpsit* at a Day after the Contract made, and before Payment; for the Continuance of the Debt is a good Consideration continuing. *Int. Hodge and Varvifer.* 3 *Bul.* 222, 223.

So if the Defendant the 20th Day of *June*, was indebted to the Plaintiff in 20*l.* for Money lent by the Plaintiff to him, and the Defendant being so indebted after, *viz.* 30th of *July* after promises to pay it at a Day to come; this is good, for it is a Consideration continuing; adjudged

judged in a Writ of Error, *Mich.* 15 *Car.* B. R. *int.* *Barton and Shurly, intr.* *Hill.* 14 *Rotulo* 913.

If *A.* and *B.* account together, and *B.* is found *9l.* in Arrears, upon which in Consideration thereof, he promises to pay it at a Day, this is a good Consideration not executed before, inasmuch as it is made upon the Account, and the Debt before the Account is uncertain, inasmuch as Allowances ought to be made. *Mich.* 11 *Fac.* B. R. *int.* *Jesson and Brier, & Trin.* 12 *Fac.* B. R. & 14 *Fac.* B. R. *int.* *Faulson & Colmore.* 1 *Roll. Abr.* 7 *Pl.* 1. *Cro. Fac.* 69. *Relv.* 70. for the *Assumpsit* commences with the Certainty of the Debt.

So for the continuing of the Consideration, for that the Plaintiff *B.* at his Costs and at the Request of *A.* had according to Agreement made certain Moulds for Casting Church-Bells. Adjudg'd *int.* *Pearson & Keen Pas.* 15 *Car.* B. R. upon Motion in Arrest of Judgment. *Intr.* *Trin.* 14 *Car.* B. R. *Rotulo* 506.

So in an Action upon the Case upon a Promise, if the Plaintiff declares that whereas the Defendant was indebted to him for several Sums of Money at several Times, then before lent to him by *A. S.* then and yet his Wife, and then due and unpaid, the Defendant did promise to become bound with a Surety in an Obligation for the Payment

ment of it at a certain Time, this is a good Consideration, tho' past, because the Debt is a continuing Consideration, and therefore good without any other Consideration of Forbearance to procure any Suit for it, or any other new Consideration. *Adjudg'd Trin. 1650 in-ter Cogdon and Ham. Intr. Hill. 1649. Rot. 170.* But 'tis otherways upon a Promise of Payment of Money upon an Obligation, without a new Consideration, as Forbearance or the like, by which he might have an Action upon the collateral Promise. *Mich. 17 Jac. B. R. per Cur. Cro. Eliz. 240 Hut. 34.*

*General Rules
of Considerations
on past.*

So it appears that a Consideration past before the Promise made, may in some Cases be a good Consideration to a Promise, also in these and the like Cases, as follow, *viz.*

1. Where that which is past, and that which is to come, do make but one entire Act, and have Dependence the one upon the other,

As where I have sold Land for Money, and after in Consideration thereof and without other Cause, promise to make an Estate, or an Assurance of it; this is said to be good. *Cro. I. 138.*

2. Where that which is to be done is but in Pursuance of that which is done, and ought in Reason and Conscience to be done,

*Past and to
come make out
entire Act.*

*Something in
Reason to be
done in Pursu-
ance of a for-
mer.*

As

As where one hath done a Work for me, or hath served me a Time, and is not paid his Wages; and now I promise him in Consideration of this, to pay him so much. *Cro. 1. 42, 194. Vid. 1 Lev. 198.*

3. Where the Party promising is as Party promised much bound to the Thing before, as he *being bound as much before as after the Promise.*

As where one is indebted to me before, and in Consideration thereof promise to pay me. *Cro. 1. 282.*

4. Where the Thing that is done is Thing formerly done at the Request, and by the Promise at the Request and Procurement of him that makes the Promise, *him that promises.*

As where I have persuaded a Man to engage for me, or for a Friend of mine, and after I promise in Consideration thereof to save him harmless from it, and this in Reason and Conscience I was bound to. *Doct. & Stud. 140. Style's Reg. 31.*

5. Where the first Cause continueth, *Where the first as the Marriage, natural Affection, and Cause continues the Advancement of the Party, and the like.*

As where I promise one 20 l. in Consideration that he hath married my Daughter, &c. *Cro. 1. 59.*

6. Where the first Act is a Kindness *The first Act a Kindness to the Promiser.*

As that the Party to whom the Promise is made, had at the Request of another granted to him that now promises

*The Trades-Man's Lawyer, and
misseth the Avoidance of a Church,
&c. Cro. 295.*

But notwithstanding what has been said in this Chapter, you must observe, That by a Statute made 29 Car. 2. to prevent Frauds and Perjuries, it is enacted, That no Action shall be brought upon any Agreement that is not to be performed within the Space of one Year from the Space thereof,

Or to charge the Defendant upon any special Promise to answer for the Debt, Default, or Miscalriage of another Person,

Or to charge any Person upon any Agreement made upon Consideration of Marriage,

Or upon any Contract for Sale of Lands, Tenements or Hereditaments, or any Interest therein. Unless the Agreement upon which such Action shall be brought, or some *Memorandum* or Note thereof shall be in Writing, and signed by the Party to be charged. See after Chapter 13. in the Conclusion.

CHAP. X

How one Promise may be the Consideration of another Promise.

ALSO one Promise may be the *Promise, Consideration of a Promise.* Consideration of another Promise, if they be made at the same Time, and each Party may sue at any Time upon the Promise made to him, and these be called mutual or reciprocal Promises. *Vid. 1 Lev. 20, 70, 77, 87, 164, 293. Hob. 16, 116. Brownl. (1) 10.*

But if they be made at several Times, *Mutual Promise* they are both void; yet if it be the *ses hew, and same Day*, it is said to be good: For *when to be made.* there is no Division of a Day. *Latch 151.*

And it was agreed by the whole *Vid. 1 Mod.* Court, that where there is a mutual *129.* Promise, that is to say,

Where *A.* promises to *B.* that he will *How the Action do such a Thing*, and *B.* promiseth to *A.* *may be brought that in Consideration thereof he will do upon it.* another Thing. If *A.* bring an Action against *B.* for not performing his Promise, he need not say he is to do the Thing which he promised, and the other refused to accept of it, for it is needless. So that if there were a Breach upon the Part of the Defendant, it is sufficient, and if there were a Breach on the Plaintiff's Part, the Defendant ought to

to bring his Action for it. *Hob.* 349.
Tborp's Case.

*Cases adjudged
betwixt Tenant
and Copyholder.*
There was a Controversy between a
Lord of a Manor and a Copyholder
of Lands; the Tenant claim'd to hold
by Copy, and they submitted to the
Arbitrament of *J. S.* and the Decla-
ration sets forth,

*Plaintiff's Pro-
mise.* That the Defendant [in Consideration
that the Plaintiff promised to him, that
if the said *J. S.* should adjudge the said
Copy to be good and sufficient for the
Title of the Defendant, that then he,
the Plaintiff, would suffer the Defen-
dant to enjoy it without Molestation.]
Promised, That if he adjudged to the
contrary, that he would surrender the
said Land to the Plaintiff without any
Suit; and shewed further, that *J. S.* had
awarded that the said Copy was utter-
ly insufficient, yet the Defendant did not
surrender Possession of the Land, &c.

And here it was argued whether the
Consideration was good, and it was ad-
judged good. *Leon.* 103. *Cook versus
Strongal.*

*Betwixt the
Seller and the
Buyer of a Cow.* *A.* sells a Cow to *B.* for five Pounds,
and promises to deliver her to him at a
certain Day, and *B.* at the same Time
promises to pay him the five Pounds for
the said Cow at the said Day.

A. brings an Action upon the Pro-
mise for the five Pounds not paid, and
doth not aver the Delivery of the
Cow. And it was adjudged good e-
nough

nough (both the Promises being set forth) for the one of them is the Consideration of the other. *Hob. 88.*

And *Note*, That it hath been said and agreed, That upon every executory Contract there is a Promise implied; and therefore upon this the Party to whom it is made may have an Action of Debt, or an Action upon the Case at his Election. As

If I sell Goods to another, and agree to deliver it at a Day to come; and the other in Consideration of this agree to pay me ten Pound for it.

Upon Agreement to deliver Goods sold at such a Time to come.

In this Case each of us may have Debt or Case. either of these Actions against the other upon this Contract. *Co. 4. 92. Slade's Case.*

But observe further this Difference, If one promise to pay me Money at divers Days, or to deliver me so much Corn during my Life;

Exception upon Promise to deliver over at several Days.

In this Case, it's said, I may not have an Action of Debt till all the Days be past; but that I may have an Action of the Case upon every Default. *Co. ibid.*

Gro. 175, 254, 255. Dyer 113.

And again observe, That there is a great Difference between mutual or reciprocal Promises, and Promises conditional.

If one therefore promise for ten Pounds by me to be paid him in hand, to build a House; this is a conditional Promise, and he is not bound to do it till

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till the ten Pounds be paid; for till then the Promise hath no Vertue to produce an Action; 14 H. 8. 20. *Brownl.* 1. 14. and it is not like to this following. As

*Promise reci-
procal.*

Where one doth promise to build a House, and the other doth promise ten Pound; for here the Promises are reciprocal, and give Action to each of them, the one against the other; and there needs no Averment of the Thing done to enable the Suit. *Hard. Rep.* 102, &c. *Vid.* 1. *Ventr.* 177, 2. 4. 2. *Saund.* 350.

Note, In Consideration that the Plaintiff had undertaken to do such an Act, is a mutual Promise, and he need not to aver the Performance of the Thing undertaken *Vide* 3 *Lev.* 319. 1 *Lev.* 20.

In Consideration one promised to build a House for the other, the other promised to pay him forty Pounds for Building; allowed to be a mutual Promise; but where the Promise is mutual, and the one Part is to be done upon the Performance of the other, the Performance ought to be averred. *Id.* 70.

A Rule therein.

And so in all reciprocal Promises; but if the Promise be conditional, it is otherwise; for then it seems that the second Promise is made in Consideration of the first Promise to be performed, As

*Concerning
new Pales.*

Where I promise to make new Pales if I may have the old Pales.

Here, it's said, I am not bound to make the new till I have the old, and I am not

not bound to look after the old ones neither. 33 H. 6. 43. 27 H. 8. 44.

So if it be agreed between J. S. and my self, that if J. S. shall deliver me twenty Pounds worth of Cloth, or assure me such a Piece of Land, that I shall pay him twenty Pounds.

Here J. S. must perform the Condition, and deliver the Cloths, or assure me the Land before he can have his Action. *Perk. Sect. 7, 13.*

So if one promise me ten Pounds when I have done such a Work: This is a good Contract, and when I have done such a Work I may sue for the Money. *Plow. 5. 44 Ed. 3. 22.*

For the Intent of the Parties is much regarded, and the Consideration that moves the Promise must be pursued.

If therefore one sell me a Horse for ten Pounds, on Condition that I pay him this ten Pounds in Corn: In this Case I must pay him the Value of ten Pounds in Corn, or he may have his Remedy by an Action of the Case. *Fitz. Debt, 68.*

If one promise me, in Consideration that I will seal a Release to J. S. he will pay me ten Pounds, and after at his Request I seal the Release to J. D. and not to J. S. In this Case I cannot bring an Action for the Money, because I have not pursued the Consideration. *Cro. 1. 3.*

So if one say to another, Make me a Lease for 21 Years, and I will give you a Horse, and the other make him a Lease

F 2 for

for 60 Years; this is not sufficient, albeit it be better, because he hath not precisely pursued the Agreement.

To go to York.

So if one say, Go and do such a Business at *York*, and I will give you forty Shillings; and afterwards (hearing that the other dwelt on this side *York*) saith to him, Do it at your House and it shall suffice. Yet notwithstanding this, if the other go not to *York*, and doth this Work there, it's said, he can never have the forty Shillings; and so of the like.

Bull. 3. 35, 222.

About a promise for Goods.

Note, That Goods, or a Promise for Goods, may be a good Consideration for Goods, or a Promise for Goods as well as Money. *Fitz. Debt. 68.*

Also if one, in Consideration that I will let him have his own Goods out of my House, promise, any Thing, this is a sufficient Consideration to make good the Promise; but it's otherwise of Writings. *Cro. 2. 202. Yelv. 128. Owen's Rep. 123.*

But if I, by Word or Promise, undertake to keep a Man's Goods safely till such a Time, and he is to give me nothing for it, and after I refuse to take them, no Action will lie against me for this.

But if I undertake and receive them, and they be afterwards impaired or lost by any Neglect of mine, it is otherwise. See more of this, Chapter 15.

Yet

Yet I may take them into my Custody, with this Caution, That if they be lost I will not answer them, or that I will keep them as safe as my own, or the like, and then perhaps I may not be chargeable. *Co. 4. 38, 84.*

But see more of this after, Chapter 15, concerning Borrowing, Lending, and Restoring.

CHAP. XL.

How a Promise may be made to another Person for my Use, upon a good Consideration, &c.

A Suit was between two, the Defendant doth promise to the Attorney of the Plaintiff, on the Behalf of the Plaintiff, That he would pay at such a Time, in Consideration of Forbearance, &c. and the Plaintiff brought an Action upon the Case, and declared specially, as before, and not generally of a Promise made to him; yet it was adjudged to be good either way. *Latch 206.*

A. delivers to B. the Goods of C. B. thereupon promises, in Consideration of a Sum of Money given him by A. to deliver them to the Owner. In this Case the Deliverer or the Owner may have an Action against him, but they cannot join. *Hard. Rep. 321.*

F 3

And

General Rule
herein.

And so generally in all Cases any one to whose Use, or for whose Benefit a Promise is made, may have an Action for the Breach of this Promise, although the Promise, were not made to him but to another. *Style's Reg.* 6. 31. *Ventr. Rep.* 6, 7, *Œc.* 318, 332. *1 Roll.* 31, 32. *Raym.* 302. *T. Jones* 103. *1 Cro.* 163, 619, 652. *3 Keb.* 786, 814. *Œc.*

Promise to my
Father.

As if one promise my Father that if I will marry his Daughter, he will give me forty Pounds, I may sue upon this, conformable to the Statute, upon a Memorandum in Writings, *Œc. Hatley* 176. *2 Lev.* 210.

A. promises B.
to pay C. Debts
C. may sue. A.

So if a Promise be made by A. to B. to make Satisfaction of all the Debts in which C. is indebted to another: In this Case C. may maintain an Action against A. if he perform not the Promise. *Trin.* 7. *Car.* C. B. *Bore's* Case.

Promise to a
Stranger.

So if A. be indebted to B. and a Stranger follows the Suit for B. A. comes to the Stranger, and says to him, Leave the Suit and I will pay your Master; the Master must bring the Action. *Hetf.* 176.

Promise to my
Wife to pay the
Debt, if the
Husband will
let one out of
Prison.

And tho' the Promise of a Woman that hath a Husband, regularly doth not bind the Husband (though he may be charged for many Things sold to her, as before observed) yet a Promise made to such a Woman is good, so as there be a good Consideration in it, and all one as if it were to the Husband. See before Chapter 4. *Hutt.* 105. *Style's Rep.* 6. And

And therefore if one say to my Wife, that if I will let *A.* out of Prison, who is there on an Execution for my Debt, that if *A.* pay it not to me such a Day, he will pay it; I alone may sue him for this. If I have agreed thereto and discharged *A.* out of Execution, tho' I gave no Command or Authority before to my Wife to make such Agreement, for my Consent to it after is sufficient. 27 *H.* 8. 24. adjudged *Tutan's* Case. 1 *Rel. Rep.* 32. *Cró. Eliz.* 61. *Godb* 361. same Case cited, and like Point adjudged.

So if one promise for Consideration, *Promise to give* to give my Wife twenty Pounds, we may *27 Wife twenty* both join in the Action, and recover it. *Pounds.* *Bulst.* 1. 122. *Noy* 19. Or I may sue alone and declare, as if the Promise had been made to my self. *Cro.* 1. 61.

Also in many Cases the Act of a Servant will bind his Master, and so a Promise to or by him is good and the Master shall have the Benefit.

An Action of the Case was brought *Promise by a* upon a Promise reciprocal; the Plain-Servant. *tiff* shews that the Servant had Power *Vide Post* 148, to agree for his Master, and in Consideration that the Servant promis'd that *149. Appendix, 8.* his Master should forbear Suit, &c. the Defendant promis'd to pay the Money, and that the Master after agreed to the Contract, and Promise of the Servant. 11 *Ed.* 4. 6. Exception was taken in Arrest of Judgment, but the Judgment was, that it was a good Promise.

F 4

Trin.

Trin. 21 *Jac.* Senior and *Wolmer. Bendl.*
132.

*Promise to a
Servant.*

So if my Servant sell my Horse for Money promised to be paid at a Day, I am to have the Money, and the Action for it, and not my Servant; for the Interest is in me. *Heil.* 176.

Note, An Action lies against one that shall retain the Servant of another Man departing without his Master's Licence. 2 *Lev.* 63. *Note,* It was brought against the Husband and Wife.

*Promise to a
second Person to
perform Something
to a
third. Rule
herein.*

And so it is said, That where a Promise is made to a second Person to perform Something to a third Person that hath an Interest in the Cause: In this Case he to whom the Promise is to be performed, and not he to whom it is made, shall have the Action.

But if in Case he to whom the Promise is made hath an Interest, though it be to be performed to a third Person; There he to whom the Promise is made, and not he to whom the Thing is to be performed, shall have the Action. See before *Heiley* 176.

Servant alone sued for a wrongful Act done by the Command of the Master. *Vide* 3 *Lev.* 352.

If my Servant be cozen'd of my Money, I may have an Action upon the Case for the Deceit against the Cozeners. *Pasch.* 8. *Jac.* in *Scaccario.* *Tracy's Case.* *Noy* 105, 106. *Cro. Jac.* 223.

Note,

Note, It is said, That if I do request one to buy such a Gelding, &c. for me, and do promise that I will repay him again, and he buys this Gelding for me accordingly, it is clear that he may have an Action of the Case against me for this Money, and I may take the Gelding; and it is also said, that before I take the Gelding the Property is not in him that bought it, but in me; and consequently if he lose the Gelding, or sell it without my Consent, I may have Remedy. *Bulstr.* 1. 169.

So if I retain a Man to purchase Land for me, and he purchaseth it for himself, I may have an Action of the Case against him. But if he endeavour to purchase Land for me, and cannot, this Action lieth not. 2 *H.* 4. 14. 11 *H.* 6. 18. 20 *H.* 6. 27. 3 *H.* 7. 14, 17.

If I retain him to buy it of *J. S.* and *J. S.* die, then he is discharg'd of it, and he may afterwards buy it for himself.

If I trust one to buy a Lease, or take an Obligation to me in my Name; and he buy the Lease for himself, or take the Obligation in his own Name; an Action of the Case lieth for this against him. *Bro.* 177. 10 *H.* 6. 4, 25. 3 *H.* 7. 14.

Upon a Promise to buy Land at the best Price that he could: The Plaintiff said, that he had not purchased it; and good, without averring that he might have bought it. 1 *Lev.* 3.

I

If

One buys a Gelding for me with his own Money.

The Property is in me.

One retain'd to purchase Land for me.

One trusted to take a Lease or Bond for me.

If one be indebted to another, and he do promise this Debt at a Day to come; in this Case the Party to whom the Promise is made cannot bring his Action for the Debt upon the first Cause, till the Day last given be past, by Chief Justice *Rolle*; for he said, That the Promise is a Suspension of the Debt; but this is to be understood when the Creditor gives Forbearance, and agrees to the Day of Payment. *Style's Reg.* 32.

Promise to pay Money, no Day no Time set, it shall be paid presently.

To make a Lease, and no Time set. If it be to make a Lease for Years, and no Time set when it shall begin, it shall begin presently. *Co.* 10. 33, 76, 102.

To deliver Goods, and no Time set.

But if one promise me to make a Lease, or to deliver Goods, or the like Thing, and no Time is set for the making or Delivery thereof, it is said he shall have all his Life-time to do it, unless I hasten it by Request, which in this Case is necessary; and then he shall have a reasonable Time. *Style's Reg.* 30. *Co.* 6. 33. 10. 77. *Hill.* 22 *Car.* 1. *B. R.* *Noy's Rep.* 65.

A reasonable Time allowed.

If I retain a Servant generally, and say not for what Time; the Law will construe it to be for one Year, according to the Statute, 23 *Ed.* 3. *cb.* 1.

If *A.* serves *B.* for a Year, but has nothing for his Service, and afterwards at the End of the Year, *B.* for his good and faithful Services, assumes to pay

pay him 10 *l.* this is a good Consideration to an Action. 2 *Leon.* 225. *Godb.*

32.

But if a Servant has Wages given him, and after his Service ended, his Master promises to pay him 10 *l.* more, he shall not have an Action because there was no precedent Consideration.

2 *Leon.* 225. *Godb.* 32. *Cro. Eliz.* 42.

If a Man promise of two Things, to do one of them by a Day, he that made the first of two Promises shall have Election to the last Day which of them he will do.

A Man promises of two Things, to do one by a Day.

But after the Day is past, it's said, that he to whom the Promise is made shall have the Election which of the two the other shall perform. 9 *Ed.* 4. 39. *Co.* 9. 94.

If one promise to enter into Bond with Sureties, the Court must judge of their Number, Sufficiency, and in what Sum. *Hob.* 79.

To be bound in Sureties.

So if it be to deliver Wares, it must be good Wares. *Dyer* 22. *Co.* 10. 143.

Wares.

So if it be to make an Estate, it must be a good Estate. *Keilw.* 77. But then

To make an Estate.

such Promise must be in Writing under Hand; for which, see Chapter 12, in the Conclusion; the Breach must be laid as the Promise is. 1 *Vent.* 64.

C H A P. XII.

The Sum of the whole foregoing, and of such Persons as may sue, or be sued in these Actions.

Persons that may sue, must not be disabled by Law.

1. **A**S to the Persons that may sue and be sued upon these Contracts, Promises and Agreements, and of the Time for bringing these Actions.
2. As to the Contract it self.
3. As to the Consideration.
4. As to the Promise.

1. As to the Persons that may sue, they must be Persons not disabled by Law,

For an outlaw'd Person; an excommunicate Person; an Alien born; one attaint in a *Præmunire*; a Man that is entred into and professed in any Order of the *Romish* Religion; one that is attainted of Treason or Felony; a Convict Recusant, or abjured the Realm; or a Feme Covert without her Husband, cannot sue. *Litt.* 196. *Co. Litt.* 135.

Persons disabled.

But this Disability is only for that Time whilst the Cause remains; for when the Attainder of Felony or Treason, or in a *Præmunire*, is off, by Reverfal or Pardon, or otherwise, or Excommunication is over, by Absolution, and the

How long they are disabled.

the like; then they may sue as another Man may do; for the Promises made to them are said to be good.

Neither will this Disability reach Executors or Administrators, who sue in the Right of their Testator. *Litt.* 199, 200. *Dyer* 275, 227, 371. *Co.* 8. 68.

Ideots, Mad-men, such as be deaf ^{*Who are not*} and dumb, or any other Man, Woman, or Child, except it be such disabled Persons, as aforesaid, may bring any Action upon the Case; but the Child or Infant must sue by his next Friend, or Guardian; the rest in Person, or by Attorney. *Litt. Sect.* 199, 200. *Dyer* 275, 227. *F. N. B.* 36. *Co.* 8. 68.

If a Promise be made to two, or more, one of them alone cannot sue whilst the rest live; but after the Death of any, the Survivors may sue. *Brownl.* 2. 99. *Co. Litt.* 297. *Promise to two.*

Two or more may not sue in one Action for several Causes, though of the same kind; but one may: Neither can they join in an Action for Slander. *Co. Litt.* 195. *Cro.* 2. 647. *Dyer* 19. *Several Causes in one Action.*

Of Executors and Administrators, Executors, where there is more than one of them, the safest Way is to sue in the Names of all. *Cro.* 1. 315.

Note, All the Partners of a Ship, and the Goods in it ought to join against a Master for Neglect and Injuries. 3 *Lev.* 258.

As to the Persons who may be sued. The

*Who may be
sued.
Husband and
Wife.*

The Trades-Man's Lawyer, and

The Husband in many Cases is chargeable upon the Contract, &c. made with his wife, as hath been hinted in particular before; but the Wife cannot be sued, or answer without him, unless as a Feme sole Merchant in the City of London. The Master is in many Cases chargeable with the Contract, &c. made by his Servant as before. *Vid. Mod. Rep.* 8. 26. *Litt. Rep.* 18, 31. 1 *Lev.* 1, § 1, 210. *Vid. 2 Lev.* 107.

The Husband alone sued a Bond made to the Wife during Coverture, and good. 3 *Lev.* 403.

Infant may.

An Infant under 12 Years will not be bound by any Contract or Promise, except it be for necessary Meat, Drink, and Apparel, Physick, Schooling, and the like Necessaries; and for this he is chargeable himself, and his Executor answer him; and the Judges, not a Jury, shall judge what shall be said necessary: The Infant must defend a Suit by his Guardian. *Vid. 1 Vent.* 51. An Infant may make a Consideration whereon to ground an *Assumpsit*. *Noy's Rep.* 85, 87. *Popb.* 151. *Cro.* 2. 494, *Leon.* 114. *Co.* 9. 87. *Bullstr.* 1. 38. *Litt. Rep.* 307. 1 *Mod.* 25. 1 *Sid.* 41, 446. 1 *Roll.* 19. 1 *Keb.* 1. 2 *Keb.* 581. *Heb.* 77. 1 *Roll.* 19.

Drunken Men.

A Contract made with a Man when he is drunk, is said to be as good as if it were made with him when he is sober; and a Promise made by, or to him in his Drunkenness, is as good as if

it were made by or to him; and so he may sue or be sued thereupon, as another Man may be.

Note, Infants are not foreclosed in Chancery till they come of Age. 2 *Ventr.*

35.

An Idiot (till he be seized or committed by the King, after his Title is found) may, it's said, sue, and be sued upon a Contract or Promise by a Guardian, Attorney, &c. *Co. 4. 125.*

So, it's said, a Traitor or Felon may, *Traitor or Felon.* at any Time after his Offence, and before his Conviction, sell any of his Goods to maintain himself; and as to this, have his Action as another Man may have, and so likely he may be charged as another Man with an Action. *Co. 8. 95. 171.*

So that an Action of the Case will lie against Ideots, Mad men, Drunken Men. Infants, Persons deaf and dumb, or any other Man or Woman. So against

One outlaw'd,
Excommunicated,
An Alien,
One attainted,
A Reculant, &c.

Though they be disabled to bring an Action; and if they bring any, the other must take Advantage of their Disability before he make any other Answer or Plea.

Note,

Rule herein.

*Joinder in
Action.*

*Who are to
join, or not.*

Note, The surviving joint Merchant, and the Executor of the Deceased, ought to join in a Suit for a Debt due upon a Contract to the joint Merchants. 2 *Lev.* 188. 228.

But if one Man calls two other Men Thieves, and shews in certain in what, &c. they shall not join in one Action against him, for the Wrong done to one, is no Wrong to the other. *Trin.* 28 *H.* 8. *Dyer* 19. *Pl.* 112. *per Cur. Goulds.* 76. *Cro. Car.* 512.

So in False Imprisonment. *Trin.* 2. *ibid.* *Owen* 106. and so in Assault and Battery. *Keilw.* 55. *Owen* 106.

If two joint Owners of a Sum of Money are robb'd upon the Highway, they may join in one Action against the Hundred in which, &c. *Dyer* 370. *Pl.* 59. 2 *Leon.* 12.

Otherways if the Sums are several, and several Properties. *Dyer* 370. *Pl.* 59.

Where one joint Action lies upon a Distress of the several Cattle of *A.* and *B.* distrained, against *C.* who promised them for 10 *l.* paid to procure the Cattle to be re-delivered, because the Consideration is intire, and cannot be divided. *Vid. Style* 156, 157, 203. 1 *Roll. Abr.* 31. *Z.* 9.

Where two have each a Mill by Prescription in the same Manor, they may both join in one Action against a Tenant who grinds at another Mill. 2 *Lev.* 27.

2 *Keilw.*

2 *Keb.* 631. *Pl.* 42. 802. *Pl.* 35. 838. *Pl.* 71. same Case and same Point agreed; and *Hale* said they must join, because the Jury could not apportion the Damages. 2 *Saund.* 115, 116. same Case and same Point agreed *per Cur.* For though their Interest is several, yet the grinding at neither of their Mills is a joint Damage, and therefore they shall join; for if they should bring several Actions, the Damages would be twice recovered, 1 *Ventr.* 167, 168. same Case and same Point agreed *per Cur.*

If two Men procure another to be indicted falsely for a common Barretor, he joined may have an Action upon the Case against them both, though in strictness the Procurement of one is not the Procurement of the other. *Lat.* 262. *per Cur. int. Pencarvin and Trapping.*

So if two conspire to maintain a Suit, Conspiracy. and one only gives Money; for the entire Parolance makes the Conspiracy. *Bro. Joinder in Action* 47. *Fitz. Error* 31. *Maintenance* 15.

So in Maintenance and Trespas, and yet the Maintenance and Trespas of one is not the Maintenance or Trespas of the other. *Lat.* 262. *per Cur.*

Two Plaintiffs cannot join in one Action for several Causes, and therefore two cannot join in one Writ, to sue upon two Bonds for Debt due to them apart, or to sue one Man for Trespas done to them severally. Yet if two or

or more have Cause to have one Action; as if a Bond or Promise be made to two or more jointly, in this Case they must sue all together. *Co. Lit. 195. 2 Cro. 647.*

But one Plaintiff may join two Debts due to him from one and the same Person in one Action; as Debt upon two several Bonds. And so it is of other personal Actions. *Stylé's Reg. Tit. Actions.*

For it is a Rule, that in personal Actions one may join several Causes or Wrongs in one Action or Writ, if they be of one Nature, and against one Person, as Debt and Detinue, &c. So one Action of the Case may be brought for divers Promises. One Action of Waste for divers Wastes of divers Lands held by divers Leases. *8 Co. 86.*

So one Action of Trespass for divers several Trespasses done at divers Places, and at divers Times, or for divers Trespasses in the same Place, at divers Times.

But Debt, and Trespass, and Wrongs of divers Natures may not be joined together in one Action, though against one and the same Person. *8 Co. 87. 1 Cro. 14.*

And if one Trespass be done by divers, the Plaintiff may make it joint or several, as he pleases: And yet two that join in a Trespass, do so make one Trespasser, that one of them is answerable

swerable for the other: And if they be sued in one Action, they may sever in Pleas and Issues, and a Release to one is a Release to all; also the Jury must assess Damages for all, but there shall be but one Satisfaction.

And Note, That where a joint Action doth lie against divers, and some of their Names are known, and some are not, the Action may be brought against them that are known by their particular Names, and declare with a *senus cum aliis*. *Style's Pract. Reg. Tit. Action.*

If two or more join in an *Assumpsit*, the Action must be brought against them all, the while they are alive. But after the Death of any of them, it may be brought against the Survivors or Survivor of them, or against the Executors or Administrators of the last Survivor of them. 1 *Bul.* 16. 2 *Brownl.* 207. *Co. Lit.* 331.

When these Actions must be brought.

Note, That by the Statute of Limitations, 21st of K. James the First, it is enacted, That all Actions of Trespas &c. for breaking a Man's Close; all Actions of Trespas and Detinue; Actions upon Trover and Replevin for carrying away Goods and Chateles; all Actions of Account (other than such Accounts as concern Merchandize, between Mer-

Limitation.

Vide Appen-

dix pa. 99, 11.

chant and Merchant, their Factors or Servants) all Actions of Debt founded upon any Accommodation or Contract without Bond or Specialty; all Actions of Debt for Arrearages of Rent, shall be brought within six Years next after the Cause of Action or Suit, and not after.

*Within six
Years.*

And all Actions of Assault, Threatning, Beating, Wounding and Imprisonment, shall be prosecuted within four Years after the Cause of Suit, and not after.

*Within four
Years.*

All Actions upon the Case for Words and Slander, within two Years after the Words spoken, and not after.

*Within two
Years.*

An Infant, Feme-Covert, Ideot, Person imprison'd, or beyond the Sea, have such Time as before limited, to bring their Actions after their Impediments and Imperfections removed.

Reservacion.

*A Writ sued
out within the
Time serves the
Person longer.*

Note, It's said, that if one take out a proper Writ within the Time limited by the Statute, as aforesaid; it is a good bringing of the Action in due Time, and the Plaintiff is not barr'd by the Statute, altho' he do not declare against the Party within the Time limited by the Statute; and it hath been often since, and is now so practised. *Style's Reg. p. 10. 1 Keb. 181.*

By the late Act 4th and 5th of *Annæ* is enacted, That Suits in the Admiralty for Seamen's Wages shall be commenced and sued within six Years after the Cause of Action accrued and not after.

Pro-

Provided that if the Persons who shall be intitled to such Suit for Seamen's Wages, be at the Time that the Action accrued within the Age of twenty-one Years, a Feme-Covert, *non compos mentis*, imprisoned, or beyond the Seas, then such Persons may bring their Actions within six Years after the Impediment removed, the Prisoner enlarged, and the Party returned from beyond the Seas, respectively.

So if the Persons against whom there shall be Cause of Suit for Seamen's Wages, Action of Trespass, Detinue, Trover, or Replevin, Account, or upon the Case, or of Debt grounded upon any Lending or Contract, without Specialty, of Debt for Arrearages of Rent, or Assault, Menace, Battery, Wounding and Imprisonment, or any of them be beyond the Seas at the Time such Action accrued, then such Person or Persons who shall be intitled to such Action, shall be at Liberty to bring the said Action against such Person and Persons after their Return beyond the Seas, within such Times as are respectively limited for the bringing of the said Actions by the said Act, and by the Statute of *Limitations* made in the twenty-first Year of K. James the First.

Note, The Statute of Limitations pleaded in Bar of Actions accruing in the Time of the Civil War, good Plea.

1 Lev. 31.

G 3

Upon

From the Request made.

Upon a Promise to do a Thing upon Request, the Action lies not upon the Promise, but upon the Refusal after Request; and the Request being within six Years, therefore the Statute of Limitations is not pleadable to the Promise. *1 Lev. 48.* Also when the Statute of Limitations is pleaded to two things laid in a Declaration, if it is not pleadable to one of them, the Plea is ill as to the whole. *Ibid.*

Action upon a Promise made 3 Car. R. 20 Years before. Defendant pleaded that the Writ was brought 4 Feb. 14 R. and that he did not promise within six Years before the said Feb. 4. 14. R. *Repl.* that he did assame within six Years before the said Feb. 4. and adjudged after Verdict upon Motion for Arrest of Judgment, that the Defendant should have no Benefit of the Statute of Limitations without pleading it; and that in this Case the Replication was no Departure from the Declaration. Also that a Man may file an Original against a Member of Parliament, without Breach of Privilege, and continue it until his Privilege be ended. *Idem 110, 111.*

Original against Member of Parliament.

That the Statute is no Bar where the Plaintiff was beyond Sea. *Idem 143.*

That the Statute is not pleadable to an Action of Debt for an Escape, or to an Action for Tithes being no Debt upon Lending or Contract. *Idem 191.*

Nor to a Debt upon Award, or for a Copyhold Fine. *Idem 273.*

Neither

Neither does it extend to Merchants Accounts stated, but only to Accounts current. 1 *Lev.* 287.

If upon Words spoken Loss of Marriage follows, if the Action be brought within two Years after the Loss, the Statute is not pleadable, tho' the Words were spoken ten Years before. if the Words themselves are not actionable without Loss of the Marriage 1 *Lev.* 69.

That the Statute is not pleadable in Avowry for Fealty. 3 *Lev.* 21.

That it is pleadable upon a Promise brought by an Attorney for Fees. *Idem* 367.

2dly, As to the Contract it self.

1. Every Contract that is made before it can yield an Action, it must be completely finished and perfected, not only in the Minds, but by the Words of the Parties therein interested and engaged. *Contract finished.*

2. As it must be made up and complete, so it must be duly pursued and performed in both Parts of it. *Pursued.* *Idem.* 87.

3. That if a Contract be in a material Part of it altogether incertain and insensible, then it seems the whole Contract will be void. *Stylles* 63, 281, 264.

4. The Breach must be laid as the Promise is. 1 *Vent.* 14.

Upon an *Assumpsit* to deliver a Gelding in as good Plight as he borrowed him; the Plaintiff avers that he did not deliver him at all: A Verdict was had for the Plaintiff; yet the Judgment was given

G 4

given against him, because the Breach was not laid as the Promise is. See 1 *Sid.* 440.

A Promise to a Bailiff on Behalf of the Plaintiff, that if he would let the Prisoner stay out of Prison at the Defendant's House one Night, he would deliver her to the Bailiff next Morning, or pay the Debt; and good. 1 *Lev.* 98. 2 *Lev.* 17.

Defendant assumed to pay for the Horse, if the Plaintiff and H. agreed upon the Price, shews that they agreed, and the Defendant had not paid the Money, allowed upon Error of the Judgment given in *Curr. Palatii.* 1 *Lev.* 130.

Upon a Promise to pay for a Horse a Barley-Corn *per* Nail, and double every Nail being 33, amounting to 500 Quarters of Barley, Damages were allowed to the Value of the Horse, being eight Pounds. 1 *Lev.* 111.

Defendant said, Put your Daughter to School, and I will pay for her a Year; and he put her to School for three Quarters of a Year, an Action was allowed. *Idem* 140.

Consideration. 3dly, As to the Consideration of a Promise.

1. That the Consideration is sometimes raised by the Law, when there is none at all expressed in the Agreement.

2. That the Consideration that shall be said to be valuable and good to raise an

Vide Appendix
duz 94. 24, 25.

Must import
Gain or Loss.

an Action upon it, the same must import some Gain to him that makes it, or to some other at his Request, or some Loss to him to whom it is made, or both.

Now to do these, and such like Things as these that follow, are held to be good Considerations in a Contract to raise an Action upon them: As

To forbear a Debt or a Suit for it.

To pay or promise Money.

To deliver or lend Money.

To give or sell Land.

To purchase Land for him.

To deliver a Horse, or other valuable Thing.

To suffer another to enjoy his House, his Land, or use his Goods.

To keep a Man's Horse, or other Goods safe.

To ear Land, build a House, solicit a Business, or any such like Work for another Man.

To pay another Man his Debt, or deliver his Goods without a Suit.

To be bound as a Surety with another.

To do a Thing for another.

To enter into an Obligation, Judgment or Statute.

To make an Estate of Lands, or to surrender or release an Estate in Land.

To marry with another, whether Child, Kinswoman, or Friend.

To

Examples of a good Consideration.

As to Forbearance, see 1

Ven. 120, 152,

154, 159.

Litt. Rep.

304. 1 Cro.

84. Yelv. 84.

184. 2 Saund.

136. 2 Keb.

811. 1 Bullst.

92. 1 Sid. 248.

Raym. 127.

1 Lev. 77,

188. & 2 Lev.

3, 20, 199,

120, 197.

submitting the

Party's Chris-

tian Name.

The Trades-Man's Lawyer, and

To enlarge out of Prison.

To pay a Rent or Annuity.

To acknowledge Satisfaction on a Judgment.

To deliver up a Statute or Obligation.

To go such a Voyage.

To heal a Disease in Man or Beast.

Not to molest one in a Suit.

To save one harmless from any Undertaking or Action that is lawful.

Not to sell Lands or Goods to such an one.

To plow Land.

Not to revoke a Letter of Attorney.

To seal a Deed.

To plant Trees.

Not to meddle with Executorship.

To make a Portion sure.

To discharge any Engagement.

To defend a Title of Land.

To perform Covenants.

To stand to an Award.

To perform a Will.

To pay a Legacy.

To give Land or Goods by a Will.

Not to oppose the Probare of a Will.

To appear in a Court.

Not to be a Surety for another.

Not to play at Cards or Dice.

To make Satisfaction for a Wrong done.

To keep a Prisoner safe,

And the like.

And as these and such like may be the Considerations to induce Promises, so

Fid. 1 Ventr.

44. 1 Sid 426.

428. 2 Crö.

44. 2 Kcb.

559. 586, 618.

1 Mod. 14.

so they may also be good for the Matter of Promises, when there is some other good Consideration to induce such Promises.

For generally whatsoever for the Matter of it may be lawful and good in the Consideration of a Promise; this also will be good and lawful in the Promise it self: And if there be a good Consideration to induce it, will give an Action. *Plow. 308. Keb. 69, 77. Finch. Law 49. Bull. 1. 33.*

Where *multum & gratissimum* Servitium, & *multa Beneficia*, may be good. *1 Vent. 27.* So for *opere labore & servitio.* *Idem 44. Vid. 1 Sid. 425. 1 Mod. Rep. 8. 2 Keb. 552.*

4thly; As to the Promise it self.

That the Promise it self as it is not less nor more, is to be performed; also the Breach must be laid as the Promise is. *1 Vent. 64. Cro. 2. 35.*

That the Promise must be to do a Thing lawful and possible; for if it be otherwise, he that makes it is not bound to perform it.

That if any Thing be to be done by him to whom the Promise is made, to make Way for the Promise; all this must be pursued and performed by him, ere he can expect the Performance of the Promise. *Cro. 1. 133.*

That the Promise in a Contract is Implied Promise sometimes implied, and not expressed.

Where

The same may be good for the Matter of Promise, upon either good Considerations.

General Rule.

Promise must be performed.

Something to be done to make Way for the Promise.

Implied Promise.

Rule.

Where a Promise is the very Ground of an Action brought, there it must be set out precisely; but where it is but an Inducement, there it's not necessary to be set out so precisely. *Style's Reg.* 30, 31.

Contracts and Promises considered together.

The Person.

1. As to the Persons, They must be Persons able to contract.

Contract.

2. As to the Contract, The Contract must be perfect and consummate.

Consideration.

3. As to the Consideration, It must be a good Consideration to induce the Promise.

Promise.

4. As to the Promise, The Promise must be certain, lawful, and possible.

So that the Contract or Agreement must cohere within it self, and must be lawful both in the Consideration and Promise, and it must be weighty and serious.

General Rule of Contracts, Considerations and Promises.

For the Law looks upon Contracts and *Assumpsits*, or Promises made either by Persons disabled by the Law to contract and promise, or imperfect and not finished, or without any valuable Consideration, or unlawful or impossible, or incertain, or insensible and doubtful, or repugnant, or vain and frivolous, as void; and doth not allow of any Action to be brought upon them.

And

*About Goods
sold.*

And if a Contract be about any Thing to be sold, to make an Alteration of Property, it must be look'd upon, if the Seller have an Ownership in the Thing sold, or a Power to sell it, or else that it be truly, and without Covin sold in a Market Overt. *Co. 5. 83. Plow. 302.*

And therefore considering the Parts of a Contract, it is to be observed, and seriously weigh'd.

*The Conclusion
of what has
been said.*

1. What the Persons are, by, to, and Person between whom it is made.
2. If it be about a Sale, in whom the Property Thing sold, and the Property of it is.
3. Whether it be consummate and Consummation perfected.

4. Whether there be any Consideration in it, and whether that be a good Consideration or not.

Consideration.

5. The Manner and Frame of the Words of the Contract and Promise.

The Words.

6. The Matter of the Promise, or the Thing it self undertaken, whether it be
1. Lawful. 2. Possible. 3. Sensible and certain. 4. Agreeing within it self. And 5. Serious and weighty.

The Promise.

Note, That Wrongs in their Nature are several; so one Defendant (of many) may be found guilty, and the other not guilty; but 'tis not so in Actions grounded upon Contracts. *Vid. 2 Vent. 151.*

Also if four be sued in a Promise, and they plead that they did not promise within six Years, and the Jury find that one

one did promise within six Years, but not the rest; the Plaintiff cannot have Judgment. 2 Vent. 151.

And there it's said, a Promise to one Part of an intire Agreement being void, cannot stand good as to the other.

Also *note*, that it's said, every Agreement must have some reasonable Construction, that may be consistent with the Intent of the Parties; and therefore if a Man agrees with another, that he shall make a Drain through his Ground, he shall not make it through the Party's Stables or Building, in Case there are other Places proper. *Idem* 278.

The Conclusion of the foregoing.

I shall conclude the whole Matter a-
foregoing as to these Contracts, Bar-
gains, Promises and Agreements (which
are either presently executed, or intend-
ed so to be; or executory, relating to
something to be done and performed at
another Time) according to the Rules
limited by the Statute of 29 Car. 2. which
was made to prevent Frauds and Per-
juries, and by which these former Cases
must be regulated. And from thence
it is to be observed.

First, As I shewed you before, That
no Contract for the Sale of any Goods,
Wares, and Merchandizes, for the
Price of ten Pounds Sterling, or up-
wards, shall be allowed to be good,
Except

I

*Bargain of
Goods above
10 L.*

Except the Buyer shall accept Part of Goods delivered the Goods so sold, and actually receive the same,

Or give something in Earnest to bind the Bargain, or in Part of Payment, Earnest.

Or else that some Note or Memorandum in Writing of the said Bargain random. Note or Memorandum be made and signed by the Parties to be charged by such Contract, or their Agents thereto lawfully authorized.

And if so done, the Action for the Money may be brought any Time within six Years (or after six Years, if a Writ (as aforesaid) be sued out within the six Years.

So, Secondly, You are to observe that the same Statute of the 29th of K. Charles the 2^d, hath further provided,

That no Action shall be brought upon any Agreement that is not to be performed within the Space of one Year after a Year from the making thereof,

Nor whereby to charge any Executor Nor Administrator upon any special Promise, to answer Damages out of his own Estate, *his own Estate,*

Or whereby to charge the Defendant upon any special Promise to answer for the Debt, Default, or Miscalriage of another Person, *Default of another.*

Or to charge any Person upon any Agreement made upon Consideration of Marriage, *Or to be charged upon a Consideration of Marriage.*

Or upon any Contract, or Sale of Lands, Tenements or Hereditaments, *Or Contract or Sale of Lands.*

or any Interest in, or concerning them,
 Unless the Agreement upon which
 such Action shall be brought, or some
Memorandum or Note thereof shall be
 in Writing, and signed by the Party to
 be charged therewith:

*Unless a Note
 or Memorandum
 be there-
 of.*

*Agreement not
 to deliver
 within a Year.* So that if the Agreement be for
 Goods, Wares, or Merchandize, under
 the Price of ten Pounds; yet if by that
 Agreement they be not to be delivered
 within a Year,

*Void without
 Writing.* That Agreement seems to be void,
 unless put in Writing, and signed by
 the Party to be charged.

*Earnest there
 will not bind.* And though Earnest be given upon
 such an Agreement, not to be perform-
 ed within a Year, it seems it will not
 help.

*Receipt of Part
 will not bind
 for the Re-
 mainder.* Also if the Contract be for Goods, &c.
 above ten Pounds; and though Earnest
 be given, or Part of the Goods received,
 yet if the Remainder be by such Con-
 tract to be delivered after a Year; this
 Contract (unless put in Writing, and
 signed) it seems will not bind for the
 Remainder. *Sed quer.*

*Nor is Agree-
 ment or Pro-
 mise to be per-
 formed after
 a Year, will
 bind without
 Writing.* And so if the Agreement or Promise
 be to do any other Thing or Things that
 are not to be performed in a Year's Time
 from the making, it will not be binding,
 unless such Note or *Memorandum* be
 made.

No Day set. But if no Day is set, or the Time is un-
 certain, as to pay so much at the Day of
 Death, &c. it is otherwise: For it does

not appear but that might happen within a Year.

Again, If any Person promises to pay the Debt of another Person, or to answer for the Default or Miscarriage of another Person.

As if he should say, Trouble not such a Man, and I will pay you the Debt he owes you,

Or, Trust such a one, and if he don't pay you, I will,

Or, If he don't do such a Thing, I'll make you Satisfaction.

These Promises, as aforesaid, without a Note or *Memorandum* under Hand will signify nothing, tho' it was at his Request, and though you may alledge and shew a good Consideration for it.

Also if the Agreement be upon some Consideration of Marriage,

Upon Consideration of Marriage.

Example.

As I will give you so much if you will marry my Daughter or Kinswoman, &c.

Appendix p. 16. 17.

Here the Marriage is made the Consideration, and so void without Writing.

Exception.

But to say, I will give you so much for such a Horse at the Day of my Marriage; this is otherwise, and good without Note: For the Horse in this Case is the Consideration of the Promise.

And if it be about the Sale of Lands, Tenements, or Hereditaments, or any Interest therein, it must be put in Writing under Hand, as aforesaid:

About Sale of Lands, &c.

H

Example.

Example.

As if a Man promise to sell you such a House, Piece of Land, or the like:

Or to make a Lease for Years, or Life, of any Lands or Tenements; 'twill not bind without Writing, &c.

And lastly, Not to charge any Executor or Administrator, upon any special Promise to answer Damages, &c.

*To charge an
Executor.*

Example.

As if an Executor or Administrator says to one that is about to sue him for Money, owing by the Testator, &c. Forbear your Suit, and I will pay you your Debt. This Promise will not bind to make him answer Damages of his own Estate, unless it be put in Writing under Hand, &c.

Therefore every Agreement not to be performed within a Year;

Every Agreement with an Executor, concerning the Testator's Estate;

Every Agreement to pay the Debt, &c. of another Person;

Every Agreement where Marriage is the chief Consideration;

Every Agreement concerning the Sale of Lands, &c. must be put in Writing, and signed by the Party to be charged.

So that it is to be noted, That though this Treatise is intended only to such Contracts, Bargains, Promises and Agreements as are by word of Mouth, or else in Writing without a Seal (which is

Cautions.

is no Deed; yet in the Particulars above named; it is absolutely necessary that there be some Note or *Memorandum* to make good such Contracts, Promises and Agreements.

And it is perhaps much better to take such Notes or *Memorandums* of such Agreements, only under the Parties Hand, than to put Seals to them, and deliver them, and so to make them Deeds.

For if they be only in Writing signed, *The Reason*, then the Law will construe them to the best and largest Construction,

But if sealed, they must then stand upon their own Bottoms; and if they be imperfect in Sense, or short in Words, or of no strong, covenanting, binding Words, they may, and usually do come short of the End for which they were intended; and this commonly happens for want of a good and skilful Scrivener or Clerk.

Note, That by the Stat. of 7 Jac. 1. 12. None keeping a Shop-book, his Executors or Administrators shall be allowed to give it in Evidence for VVares or VVork, above one Year before the Action brought, unless they have obtained a Bond or Bill for the Debt, or brought an Action for the Money within one Year next after the Wares delivered, or VVork done.

But this Act is not to hold place between Merchant and Merchant, Tradesman

H 2

*Convenience
of a Note under
the Hand.*

*Inconvenience
of a Note under
the Seal.*

The Reason.

*Shop book given
in Evidence.*

man and Tradesman, or Merchant and Tradesman, for any thing falling within the Compass of their mutual Trade and Merchandize.

How Promises, Contracts, and Actions for them, or otherwise, may be said to be gone or discharged: See the next Chapter, and also Chapter 20.

CH A P. XIII.

About a Demand or Request, and Notice.

Vide Appendix pa. 3, 5. 25, &c. to 31. Demand, Request, and Notice. Ante 54, 55.

IN many Cases before a Contract or Promise can be said to be broken, and an Action brought, there must be a Request, or a Demand made by him that is to bring the Action, of him against whom it is to be brought, or a Notice to be given to him who is to do the Thing promised to be done, of something else done before the Thing promised to be done.

For the explaining of which take these Rules and Examples following.

If I promise, upon good Consideration to pay ten Pounds, and say not when; in this Case it seems no Demand is needful; but the Damages will not be so great, as if requested.

But if I, by Note or Writing, promise to pay 10 l. owing by another Man, if

Rules therein.

Monies to be paid, no Time set.

if he pay it not himself at *Michaelmas*, upon Demand: In this Case he must demand it before he can sue for it, because this was a Promise to do something which did not immediately relate to my self, and therefore is said to be of a collateral Matter. 12 H. 8. 12. 17

Fac. B. R. Cro. 1. 98, 99.

So if one promise to save me harm-^{Promise to}less concerning any Suit about my Land,^{save harms} and there be a Suit about it, and a Recovery against me; in this Case I must give Notice of the Suit, and my Damage; and demand it ere I can have an Action against him. *Cro. 1. 254, 255. Cro. 2. 97.*

If I, by Note in Writing, in Consideration that another promise to marry my Daughter, promise him forty Pounds upon Request: In this Case, and so in all others where a Promise is to do or pay something upon Request,

There must be a Request made, and Request it must be specially alledged in the Pleading. *Bulfr. 3. 29. Cro. 1. 774. Cro. 2. 183. 2 Vent. 75.*

If one promise to save another harm-^{To save harm-}less from any Thing, he that made the Promise (it is said) ought to do it at his Peril, without Request; and Request is not here material. But if upon his Request He be recompensed his Damage, the Promise is not broken: But if it be broken, it seems I am bound to give him Notice of my Damage, and demand it.

H 3

See

See *Bulst.* 2. 229. Upon a Promise to deliver before such a Day, he ought to do it without Request. 1 *Lev.* 289.

*General Rule
for a Request.
Appendix 28,
29.*

It is the general Rule for a Request, That in all Cases where the Ground of the Action is for the Debt, or where an Action of the Case is brought for a Thing that was originally a Debt, and where the Law induceth the Promise, the Request is not issuable, nor Parcel of the Consideration; as if I sell my Horse for Money, and no Day of Payment is set, it is due presently; and so where I put my Horse to an Hostler to keep for 8 *d.* Day and Night, if he sue for the Money he need not make a special Request, and the like. *Brown* and *Goldsb.* 12, 13, 14. *List. Rep.* 338.

Collateral Matter.

But it is otherwise where the Action is founded upon a collateral Matter, which is not a Duty, or upon a Promise to do a collateral Thing, as to pay ten Pound owing by another Man, &c. if he pay it not himself. In this Case he must demand the Money before he can sue for it, and must set down Time and Place for his Request; for there the Request is issuable, and therefore ought to be expressly alledged. *Nolo* 66, 67. *Cra.* 2. 723. *Vide* 3 *Lev.* 361.

*Demand or
Request.*

And in all Things where a Promise is to do something upon a Request, there a Request must be made, and so it was agreed by the Judges, That where a Man brings an Action against another upon

upon a Promise to pay Money upon Request, that an actual Request must be. 1 Cro. 774. 85, 95. Cro. 2. 183. Leon. Rep. 389. And where Request is to be set forth, there it is material and traversable. 1 Cro. 179. 3 Bulst. 298, 326. Hard. Rep. 37.

Yet, as is aforesaid, where there is a Dury in the Plaintiff before, there it will not hurt, though the Request be not alleged: But where the Request makes it a Dury, there the Request must be precisely alleged; and upon a Promise to pay a Penalty or collateral Sum, there ought to be an actual Request before the Action brought. Godb. Rep. pl. 387. 1 Saund. 33.

Note, If a Contract be made, and no Time set when to pay the Money, and the Plaintiff sue for it before a Request, he shall not have such Damages besides his Dury as he shall where he doth make Request. Godb. pl. 454.

Upon a Promise to save harmless a Promise to special Request must be alleged. 2 save harmless. Bulst. 229.

Note, Where-ever I make a Promise Something to upon a Thing to be done at my Request, be done at my the Request must precede and be done before the Execution of the Act, ere the Promise is to be perform'd. Hob. 145.

If three Persons jointly promise to Promise by three pay, or give somewhat upon Request; Persons. if the Request be made to one of them; it is good enough. Noy's Rep. 135. Vide

H 4 3 Lev.

3 *Lev.* 363 366. *Assumpsit* for Money laid out to his Use, without saying at his Request.

Demand.

Appendix pa.

29.

The Rule of Demand.

If a Man find my Goods, or take them from me, or from another that hath them, or if he hath them by my Delivery, or by the Delivery of another to whom I delivered them, and he either keep them from me, spoil or dispose of them, or convert them to his own Use, or if they be stolen or taken from him, and I suffer Damage by it; in this Case, before I can have any Action on the Case, Action of Trover, or the like, I must first make a Demand of my Goods.

Vid. 1 *Cro.* 73, 74, 85, 97.

Demand before Day.

Where a Time certain is limited for the Payment of any Thing, it availeth not to alledge a Demand before the Day: But it is otherwise where the Time is uncertain. 1 *Cro.* 455.

Demand at Will.

Yet then, where a Man by Agreement hath a Power to demand, there generally he may make his Demand when he will. 2 *Cro.* 194, 195.

Demand of a Surety or third Person.

Demand must be made of a Surety or third Person, promising a Debt before an Action can be brought against him.

Notice.

Notice.

If I promise, as aforesaid, Money to the Marriage of my Daughter or Kinswoman; in this Case no Notice needs to be given me of the Marriage before the Suit brought.

*Vid. Appendix.
p. 3. 5, 25, 26,
&c.*

*The Rules of
Notice.*

But if I promise to pay the Money upon a Penalty; as thus, If you marry my Daughter, and I do not then immediately pay you 20*l.* in three Weeks after I will pay 40*l.* In this Case Notice must be given of the Marriage and Demand of the Money.

*Promise with a
Penalty.*

*Old Book of
Entries, fo. 4.
New Book of
Entries, fo. 2.*

So if I by Writing promise a Man 20*l.* Promise upon at his Day of Marriage, or when he shall marry any Woman whatsoever;

*Promise upon
Marriage of a
Stranger.*

In this Case, 'tis said, Notice must be given to me that he is married, ere I can be sued. Yet see *Noy's Rep.* 123. and *B. and Gold.* 10.

But if in like Manner I promise to one *A.* a hundred Pound if he marry *A. B.* my Cousin or Servant: In this Case 'tis said Notice is not necessary, but Error.

No Notice

*given, and yet
held good, and
affirmed in
Error.*

it shall be intended that when he demanded the Money, he gave Notice of the Marriage: But if it be a collateral Thing that is to be done on the Marriage Day, here Notice must be given.

*Upon Marriage
of my Cousin,
&c.*

3 *Bulst.* 236, 237. 2 *Gro.* 228, 229.

So if one bind himself by Promise to me to pay me such Money as I shall lend to *J. S.* and I do after lend him

*Promise to pay
me so much Mo-
ney as I shall
lend another.*

100*l.*

100 l. I may bring my Action upon the Promise, without giving Notice to him, and he at his Peril is bound to take Notice of it, and I am not bound to seek unto him to give him Notice. And so 'twas adjudged and affirm'd in Error in *Easter Term*, in the sixth Year of King *James* the First, in the Case of *Harvey* and *Leighton* in the King's Bench. See 1 *Lev.* 48. No Notice need to be given where the Person to whom the Act is to be done, is certain. *Cro. 2. Car.* 34.

But where a Duty or Action doth arise upon a private Act of the Plaintiff, and the Breach is so private, that the Defendant, by no Possibility, can know it without Notice :

As if I promise to pay Money to one upon his Return from *Rome* into *England*, &c. There Notice must be given of it before the Action can be brought. *Hob. Rep.* 51. *Fenk. Cent.* 7. *Case* 11, 92.

But for Brevity-sake, take this general Rule, That in Cases where it doth or may rest in the equal Knowledge of the Parties, what is done, or to be done; there no Notice is to be given by the one Party to the other what is done. But where it is more in the Knowledge of him to whom the Benefit of the Promise accrues, and to whom it is to be done: There Notice is to be given.

Bull. Rep. 1st Part, 12, 13.

And in Case where a Penalty is to be recovered for the not doing of a Thing,

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there

General Rule
of Notice.
Vid. Appen-
dis. p 25, 26.

there Notice must be given ; but where no Penalty, but bare Damages only to be recovered, if it rest in their equal Knowledge, there it is not needful. *Hard. Rep. 42. Mod. Rep. 86, 87, &c. 1 Vent. 201.*

Also there is a Difference where the Thing to be done is executed, and where it is executory ; where executed, no Notice to be given ; but where it is executory, as if I promise to see you paid for what Cloth you shall deliver to J. S. In this Case he must give Notice what Cloth he doth deliver.

Also there is this Difference, when it rests upon a Matter or Act to be done between the Parties themselves ; there Notice is to be given of this Act done to that Party who is to make Payment of Money, upon such Act to be done by the other Party.

But it is otherwise where Money is to be paid by the Party promising unto the other Party promised upon some Act to be done by a Stranger : For there the Party promising hath taken upon himself to take the Notice at his Peril.

If some collateral Thing be to be done, it's said, Notice must be given.

3 *Bull. 237.*

And in all Cases where Notice is to be given, or Request or Demand to be made, to produce or warrant the Action, the same must be done accordingly. See *Gro. 1. 73, 74, 85, 97, 133, 210. Leon. Pl.*

*Difference of
Thing executed,
and executory.*

*Upon an Act to
be done by one
of the Parties.*

*Upon an Act to
be done by a
third Person.*

Pl. 156, 169. *Hard. Rep.* 36, 37. 2 *Vent.* 75. 2 *Lev.* 198.

Note, A Request will supply a Notice of Marriage, or any such like Thing. *Co.* 8. 89.

C H A P. XIV.

About Borrowing, Lending, and Restoring, &c.

Where the Lender may not expect the same Thing again.

IF one lend me Money, Corn, Wine, Victuals, or such like Things, he may not expect the same Thing in kind again, but the like, or so much, &c. for it is borrowed to be used, and if used, cannot be re-delivered; but if not used nor spoiled, it may be re-delivered. Yet some Things may be borrowed to be used, and then delivered again; as a Horse, or a Cart, &c. and here the Owner may expect to have his own again in kind; and the Borrower may use them in such Manner, and for that Intent they were borrowed and lent; and if they perish by such Usage, he that oweth them and lent them shall bear the Loss, if they perish not through the Default of him that borrowed them; or if he did not make a Promise at the Borrowing and Delivery to him, to re-deliver them safe again. *Noy's Max* 91.

Gro. I. 194.

And

And if the Borrower use these Things, ^{Goods lent used to another Purpose.} Goods or Chattels borrowed to any other Purpose than for which they were

borrowed or hired, (though they be never the worse for it) it's said, the Lender may have an Action of the Case against him; but this seems to be needless:

1 Cro. 83, 84. Co. Litt. 89.

However, if they be used to other Purpose, and spoiled, or perish (if it be not in Default of the Owner) he that did borrow them, it's said, shall be charged with them in Law and Conscience. And if they be used to no other Purpose, nor put to no other Use than for what they were borrowed, yet if they be lost or stolen, or perish through the Borrower's Neglect: As if he puts a borrowed Horse into an old rotten House, likely to fall, and it do fall and kill him, the Borrower must make him good, and so of the like. *Ibid.*

But if the Borrower puts the Horse ^{By Tempests or through Default of the Owner.} into a strong House, and the House by sudden Tempest, or the like, be thrown

down, fall upon him, and kill him, or he dye of some Disease which the Borrower by no Means or Care could possibly prevent: Or if it be through Default of the Owner: In these Cases, 'tis said, the Borrower shall not answer for him or them. *Doct. and Stud.* 128,

129. Cro. 1. 14. *Brownl.* 1 Part, 8, 9, 17.

But if the Borrower detain the Goods ^{Detaining} borrowed over the Time, the Lender ^{Goods longer.} may

Goods perish through the Borrower's Neglect.

may bring an Action of Detinue for Recovery of them, or on the Case for his Damage. *Leon.* 203, 304. 1 *Bull.* 29, &c. *Style's Reg.* p. 6. *Style's Rep.* 3.

Again, If a Man leave Goods with me in my House or Shop, or elsewhere, to be kept; and I receive them in generally (without any Caution, as without saying, I will keep them as I keep my own, or if they be lost, I will not answer them, or the like); it's said, that in such Case, without Caution, I am bound by Law to keep them safe, and to see them safely restored, albeit I do it out of Charity, and have nothing for it: And some hold, That if they are lost by Robbery, and the like, against my Will, yet I must answer them. *Broun.*

2d Part 152. *Dyer* 12. *Co.* 7. 15.

And lost, are at the Peril of the House-keeper.

Goods lost by Tempest.

Yet it is held, That if Goods be delivered to be carried by Water, and there happen a dangerous Storm upon the Water, whereupon to save the Lives of the Passengers, the Barge-Men or Mariners throw the Goods out of the Boat into the Sea, or *Severn*, &c. No Action will lie for this. *Bull.* 2d Part, 280. *Dyer* 12. *Co.* 5. 14.

A Caution to such as take in other Peoples Goods to keep.

However, it will be great Wisdom of them that take into their Custody any Thing of their Friends, to keep or carry *gratis*, to take it into their Custody, with some such Caution as is aforementioned, or else not to meddle with it at all, especially if it be of any Moment. But

But where common Carriers by Land or Water take in Goods for a good Consideration, this Caution will not help them; neither may it help others, if there is a good Consideration in the Case for keeping them. *Co. Litt.* 89. *Co.* 4. 83. 5. 13. *Keilw.* 77. See after in Chapter 16.

*Where Caution
avails not.*

If one deliver Goods to another for my Use, or to be delivered over to me, and he to whom they are delivered detain them from me; In this Case either I or he that first delivered them, may have an Action against the other for detaining them. 1 *Bull.* 68. *Dyer* 20, 21. *Vid.* 12 *Ed.* 1. 3. *Bro* 96. *Fitz* Act. *Surlé's* Case 19.

*Goods delivered
for the Use
of a 3d Person.*

If I have Goods of another's by Delivery, and he require them of me, I may no longer keep them, unless I will expose my self to an Action about them. *Hutton* 10. *Hob.* 187. *Co.* 10. 46. And I may maintain an Action against any Stranger that shall take them out of my Possession. *Style's* Reg. 256, 257.

*Action lies for
a Detainer of
the Goods, and
for taking them
away by a
Stranger.*

But if one deliver me Goods to deliver over to another, and I do so; or deliver me a Horse sick of divers Diseases, whereof he dies before Demand of him; or I re-deliver the Thing again to him; or deliver it over according to Appointment, before any Suit brought, or the Party that delivered me the Thing doth afterwards give it me: In these Cases

*Where Action
lies not.*

Cases no Action will lie against me for the Goods. *Co. 4. 23. F. N. B. 138.*

One finds my Goods, and loses them unwillingly.

If one find my Goods, and they be after hurt or lost by Casualty, without any Default of the Finder, he is not to be charged.

Loses them by Neglect.

But if he wilfully lose them, or suffer them to be lost by his Neglect, it's said I may have an Action against him. See after.

Leaves them in an old House, and they are burnt.

But if they be left in a House, which by Chance is burnt, or falleth, or they be delivered to another to keep, who runs away with them; here it seems the Finder is not to be charged. *Doct. & Stud. 38, 129, &c. Co. 4. 84.*

Wilfully abuses them.

But if one find my Goods, and use them, or wilfully abuse them; as if Pauper, and he put it into the Water, and the like, I may have an Action. *Style's*

Negligent keeping them.

Rep. 12, &c. But not for any negligent Keeping of them; as if it be a Garment I find of another's, and I suffer it to be Moath-eaten; or a Horse, and I give him no Meat: For no Law compelleth him that finds a Thing to keep it safely. *Bulst. 3. 151. Bulst. 2. 135, 201, &c. 1 Cro. 219, &c. 1 Leon 224.*

My Goods taken from a third Person.

If one take away my Goods from me, and another by Force from him, I may, it seems, have an Action against either. So if he take them from one to whom I delivered them. *12 Ed. 4. 12.*

If I find Goods, and they are distrained in my Hands for Rent; or upon an Outlawry against me, or I sell them away: In all these Cases the Owner may have Remedy by an Action against me. 27 H. 8. 12. 12 Ed. 4. 8.

Yet my Goods may be taken in another Man's Ground, doing Damage; or as a Distress for Rent, if they be found there; and I shall have no Action for this against the Owner of the Ground. *Ibidem.*

So if I will leave my Goods with another, whether he will or no; and there they be taken as doing Damage, or as a Distress for Rent; or he himself on whom they are left distrain them Damage-feasant; no Action at all shall lie against him for this. Co. 11. 89.

And yet if in this Case he shall kill or sell my Goods, I may have an Action against him. 43 Ed. 2. 21.

If one deliver me a Trunk, Chest, or Coffer, with Things in it; and it is locked in my House, but he keepeth the Key thereof: In this Case, if any thing be lost out of it, I shall not be chargeable. 4 Co. 82. But if the whole Chest, and the Things in it be gone, I shall be answerable for it.

Trover and Conversion, it's said, lies for Money, tho' not in Bags, because the Thing it self is not to be recovered, but only Damages for it. Mich. 3 Jac. I B. R.

My Goods found in another Man's Ground.

Goods left with one against his Will.

Trunk lock'd left with me, and pick'd.

B. R. said to have been often adjudged.
Cro. Eliz. 841. *Owen* 131. *Cro. Car.* 89.

So *Mich.* 12 *Jac. B. R.* int. *Isaac & Clerk.* 1 *Roll. Rep.* 59. *Godb.* 210. *Moor* 841. but it was for Money in a Bag.
So *Trin.* 17 *Jac. inter Temple & Sims* for 100 *l.* of Money numbered in a Bag.

Trover and Conversion lies for an Obligation. *P.* 14 *Car. B. R.* adjudged in Error int. *Siddowu & Miller. vide Cro. Eliz.* 723. *Cro. Car.* 292. *Gouldf.* 90. *Cro. Jac.* 637.

Trover, &c.
*Vide Appen-
dix p.* 31, 32.

Vide Hard. 111. adjudged for Letters Patents.

It lies against a Man and his Wife supposing that they converted the Goods to the Use of the Baron. *Mich.* 13 *Car. B. R.* *Yelv.* 165. *Noy* 126, &c. but the Action must not be that they converted them to their own Use, because the Wife cannot convert Goods to her own Use, tho' she may convert them to the Use of her Husband, or to the Use of a Stranger; but Detinue lies against the Husband alone. 1 *Leon.* 312. *Cro. Jac.* 661. *Palm.* 843. 2 *Ven.* 45.

But upon a Sale of Goods to a Feme Covert, the Husband shall not be charged in Trover, because the Delivery and Conversion being with the Consent of the Owner can be no Wrong. 1 *Sid.* 129. 1 *Mod.* 136, 137. 1 *Leon.* 5.

Other-

Otherwise if the Owner did not know her to be a Feme Covert. 1 *Sid.* 129.

If Commissioners of Bankrupt actually seize any of the Goods of the Bankrupt (as by Law they may) if such Goods are taken out of their Possession, &c. they may have Trover and Conversion. 1 *Mod.* 31. 2 *Keb.* 589.

It's said, if *A.* is indebted to *B.* in a certain Sum, and *C.* is indebted unto *A.* and it is agreed between *A. B.* and *C.* that *C.* in Discharge of his Debt to *A.* should discharge the Debt of *A.* to *B.* by Delivery of certain Goods to *B.* which *C.* had then in his Custody, but were properly the Goods and Commodities of *A.* but *C.* does not deliver the Goods accordingly, but converts them to his own Use, *B.* tho' he never had the Possession, may have an Action of Trover and Conversion against *C.* 1 *Bul.* 68. *int. Flevelling and Rave. sed quare.*

Trover lies for a Stray before an actual Seizure. *per* 2 *Keb.* 589.

Trover brought by the Winner against him that held Stakes upon a Wager. *Cro. Eliz.* 870.

Trover by a Letter for Timber-Trees felled by the Lessee tho' he was never actually possess'd thereof. 2 *Roll. Abr.* 119. *Pl.* 2.

Generally if a Man shall get into his Hands any of my Goods, living or dead, being
I 2

being my Goods, by finding, borrowing, or otherwise in any Case whatsoever; and he hath no Right, or Property, or Possession in Law to the Thing, and he waste it, convey it away, sell it, or otherwise convert it to his own Use. I have (it's said) an Action of Trover against him. 4 Co. 84. 29 *Aff. Pl.* 28. 12 *Ed.* 4 & 8. 27 *H.* 8. 13. 39 *H.* 6. 2. And if it be a Horse, and sold by twenty Men, I may bring an Action against either of them; but a Sale in open Market, as before, alters the Property.

If a Man takes my Horse and rides him, and after redelivers him to me, yet I may have an Action of Trover and Conversion against him, for this is a Conversion, and the Redelivery is no Bar of the Action, but shall be only in Mitigation of Damages. *Trin.* 38 *Eliz.* *B. R. per Cur. Leon.* 223. *Gouldsb.* 155. *Style* 261. 1 *Bul.* 38.

So if one finds a Horse and gives him no Sustainance, this, it's said, is no Conversion. *per Cro. Eliz.* 219. *per Cur.* yet 'tis made a *Quære*, if he takes him into his Possession.

Trover and Conversion lies not for things that are wild by Nature, and untamed, or not reclaim'd. *Cro. Car.* 145. but it lies for Musk-Cats and Monkies, and Parrats, without shewing that they are reclaimed; so for Negroes, because usually bought and sold by Merchants.

Cro.

Cro. Fac. 262. 1 *Bul.* 95. 2 *Lev.* 201.

3 *Reb.* 785. *vide Thomp. Ent.* 33.

Also Trover and Conversion lies for a Spaniel-Dog, for he is reclaim'd; adjudged upon Demurrer, and that it need not be averred, the Spaniel was reclaimed. *Cro. Eliz.* 126. *Hut. Rep. Case* 363. *int. Pells & Leman*, tho' the Judgment was reversed in Error for another Reason.

Trespas for a Grey-hound. *Cro. Fac.* 463. *Hob.* 283.

So Replevin lies for a Ferret. *Cro. Eliz.* 126. *Cro. Fac.* 463. and by 3 *Lev.* 336, 337.

If a Man find my Goods, and knows them to be mine, and he refuses and denies to deliver them to me, some have held this to be a Conversion in Law, as *Mich.* 28 *Eliz. B. R. int. Easton & Newman*; per *Cur.* for that the Denial makes him a Trespasser *ab initio*; for this shews his Intention to be so. *Moor* 460. *Pl.* 640. 843. *Cro. Eliz.* 495.

But in such Case, if he answers that he knows not whether I am the true Owner or not, and therefore refuses to deliver them, this is no Conversion if he keeps them from me. 2 *Bul.* 310. 312. and 1 *Roll. Rep.* 131. Same Case cited and denied by *Coke*, and said that the Denial being only a Nonfessance could not make him a Trespasser *ab initio. vide* 2 *Roll. Abr.* 561. *Pl.* 1, 2, &c.

What is a Conversion. Vide Appen- dix pa. 32, 33.

If I deliver Goods or Money to another, and after upon my Demand he refuses to restore them, yet this is no Conversion; but only Evidence of a Conversion; inasmuch as he came to them by my own Delivery. *Hill. 12 Jac. int. Isaac & Clerk. Cro. Car. 262, Hob. 187. 2 Mod. 244.*

But 'tis no Evidence where notwithstanding the Demand and Refusal, it is apparent the Defendant has made no Conversion; as if the Demand was of a Timber-tree, lying in the Defendant's Ground; for it is apparent that he has not converted it, if it continue in the Ground as before. *1 Roll. Rep. 60, 131. 2 Bul. 310, 314. 2 Mod. 245.*

Innkeeper.

Note, That every Innholder is bound by the Law, the Goods and Chattels of his Guest to keep in Safety so long as it is within the Inn, tho' the Guest did not deliver them to him, nor acquaint him with them. But he shall not be charged, if the Servant or Companion of the Guest do imbezel them, or if the Guest do leave them in the outward Court. *Dyer 266. Noy's Max. p. 92, 93. Co. 8. 33.*

And the Party that loseth must be a Guest of the House, and a Stranger or Traveller, and must make it appear that the Goods were brought into the Inn. See *Co. 8. 31. Benloe's Rep. 173.*

The Party must lie there, or say he will return at Night, otherwise if the Goods be stoln no Action will lie.

Ca.

Co. 8. 32. Unless it be a Horse or living Thing that is left, by which the Innkeeper doth gain. See a Precedent. Co. Ent. 345. *Latch Rep.* 127.

But this will better appear by what follows.

It is said that if a Man puts a Sign at his Door, and harbours Guests, this makes his House a common Inn, and himself chargeable as an Innkeeper. *Trin.* 23 *Jac.* 2 *Rol. Rep.* 345. by three Judges. *Palm.* 374. 2 *Rol. Abr.* 843.

But if he takes down his Sign again, he dischargeth himself of the Burthen, *ibid. ut antea* and *Godb.* 346.

Yet if after the taking down his Sign, he uses to harbour Men, it is as much a common Inn as if he had a Sign. *ibid. ut supra.* However,

If common Innkeeper or Host refuses a Guest, under Pretence that his House is already full, if this be false, an Action upon the Case lies against him. *Pas.* 4 & 5 *P. & M. Dyer.* 158. 32. 2 *Brownl.* 254. 2 *Rol. Rep.* 345. *Palm.* 367, 374. *Godb.* 180, 346. *Keilw.* 50. *Godb.* the same Point *Fitz. Hoffer* 3 *Bro. Act. sur le Case* 76. But he is not bound to receive a Horse unless the Master be lodged there. 2 *Brownl.* 254. nor bound to let him have Meat unless paid beforehand, for the Host is not bound to trust. *Bro. Act. sur le Case* 76. *Bro. Contract* 43. 9 *Co.* 87. b.

Again, if an Innkeeper refuses to entertain me for my Money, having spare Room to do it; I may have an Action against him. 39 H. 6. 18. 18 H. 7. 50. Pl. 4. 14 H. 7. 22. *Dyer* 158.

So if a Victualler refuses to sell me Victuals for my Money. 39 H. 6. 18.

And 'tis to be noted, That where an Innkeeper refuses to lodge me, or Herbage for my Horse, when he hath Room in his House, and may do it, I may have an Action against him, and the Constable of the Town may, if he will, compel him to receive me, unless he can give good Reason for his Refusal, or that his House is full, or that I have the Plague, or the like. 14 H. 7. 22. *Keilw.* 50. *Dyer* 158. 5 *Ed.* 4. 2.

If an Host refuses a Guest because his House is full, and the Party says he will shift among the rest of the Guest, and there he is robbed, the Host shall not be charged. 4 & 5 P. & M. *Dyer* 158. 32. *Benl.* 60. Pl. 103. Adjudged by all the Judges of the Common Pleas. 1 *And.* 29. same Case adjudged.

But Note, He must be a common Innkeeper, that may be charged for Goods stoln in his House. *Pas.* 3 *Hen.* 4. B. R. *Rotulo.* 28. 8 *Rep.* 32. *Dyer* 266. See *Rast. Ent.* 405. Issue joined upon this Point. So in *Aston's Entr.* 48, 49.

If an Host tells a Guest that he must go abroad, and therefore can't attend him, and upon this the Guest takes up his

his Lodging there at his Peril, if his Goods are stoln, it's said the Host shall not be charged. 11 H. 4. 45. *Fitz. Hostler. 5. Bro. Aet. Sur le Case* 41. same Case.

But if an Host takes in a Guest, and of his own Head goes abroad without Compulsion of Law, yet must he answer for the Goods of his Guest; for he ought to have a Servant to take Care of them in his Absence. *Ibid. ut supra.*

And it's said, that if an Innkeeper be so distempered that he is not of a sound Memory, and a Guest knowing thereof, inns there, where his Goods are stoln, an Action lies against the Innkeeper; for he cannot disable himself by saying, he was not then of a sound Memory. *Micb. 40 & 41 Eliz. B. R. in Cross & Andrew's Case* adjudged, but not entered. *Cro. Eliz. 622. same Case* adjudged.

But if an Inn comes to an Infant, and he keeps it, and his Guests are robb'd, yet no Action lies against the Infant. Agreed in the said Case of *Cross* and *Andrews*.

It is said by the ancient Law, that a Guest the first Day was called a Traveller, the second Day a Hogenhine, and the third Day a menial Servant, for whom the Host should answer in the Leet as for his Servant. *per Latch* 88.

If

The Trades-Man's Lawyer, and

If *A.* comes with Goods to an Inn in *London*, and stays there for a Week, Month, or longer, and is there robb'd of them, he shall have an Action against his Host, tho' perhaps being at the End of his Journey, he cannot then be said *transiens*, according to the Writ in the *Reg.* In the Case of *Drope and Thaire. Latch* 127, 179. *Noy* 79.

But if an Attorney hires a Chamber in an Inn for the whole Term, he is *quasi* a Lessee; and if robb'd, the Host is not answerable. *Moor* 877. *Warburton* said it had been adjudged: So if a Man upon a special Agreement boards or sojourns in an Inn, and is robb'd, the Host shall not answer for it, *Latch* 127. *Popb.* 178, 179. *Hetley* 49. *Dyer* 158. in *Margine.*

If my Goods are stolen out of an Inn where I am a Guest, but my Goods were delivered to the Host upon another Account, I can have no Action. *Micb.* 40 & 41 *Elix.* B. R. *int. Bemon* and *Watson.*

If the Host requires his Guest to put his Goods in such a Chamber, under Lock and Key, and that then he will warrant their Safety, or else not; and notwithstanding the Guest suffers them to lie in an outer Court, where they are stoln, no Action lies against the Host, for they were not lost through the Neglect of the Host, but of the Guest. *Micb.* 9 & 10 *Elix.* *Dyer* 266. B.

B. Spencer's Case. Vid. Co. 33. Et vid. Moor 78. Pl. 207. 158, 159. like Point dubitatur.

If an Host demands of his Guest what Money or Goods he has, and he tells him none, or less in Truth than he has, if afterwards they are lost, some have held that the Host is not answerable. *Hill. 26 Eliz. int. Brand & Glasf. Vid. Moor 158. Pl. 399. by one Justice, but two contra;* for it's said, the Host is liable, tho' the Guest does not acquaint him what Goods, &c. he has. 8 Co.

33. A.

Where the Host assigns his Guest a Chamber to keep his Goods, and after he is there robb'd, an Action lies. 42

Ass. 17. Adjudged 8 Co. 32. Caly's Case.

If the Host delivers the Key of the Chamber where the Goods are to the Guest, and he leaves the Door open, and the Goods are stoln, yet it's said, an Action lies against the Host, for at his Peril he ought to keep safely the Goods of his Guest. 8 Co. 33. in *Caly's Case. Fitz. Hostler 1. same Point.*

But if the Guest is robb'd by his Servant, or one that comes with him, or by one that he desires may be lodged with him, he shall have no Action against the Host; for it was the Folly of the Guest to keep such Servant or Company, and there is no Default of good Custody in the Host. 8 Co. 33. *Caly's Case, Cro. Eliz. 285.*

Also

Also if the Guest be assaulted and beat within the Inn, he shall have no Action against his Host; for the Charge of the Host extends to the Moveables only, and not to the Person of his Guest, as said in *Caly's Case*. 8 Co. 32. b.

If a Man comes to an Inn with a Hamper, in which he hath several Goods, as Hats, &c. and goes away leaving this with the Host, and two Days after comes again; but in the Time of his Absence this is stoln, he shall have no Action against the Host, for at the Time of the Stealing he was not his Guest; and by the keeping of the Hamper, the Host had no Benefit, and therefore shall not be charged for the Loss of it in his Absence. *Micb. 5 Fac. B. R. int. Jelly & Clerk* adjudged. *Vid. Pas. 4 Fac. Rot. 454. Cro. Fac. 188. Noy 126. Popb. 179. Latch 127. 2 Brownl. 255.*

But it had been otherways, if he had returned the same Night. *Moor 877. Popb. 179. 2 Brownl. 255. Dyer 158. Cro. Fac. 188. Latch 177.*

Also if the Innkeeper had made a special Promise for the safe keeping of them *per Cro. Fac. 189.* but then this is thought to be *nudum pactum*, &c.

And according to the Report of the same Case, *Noy 126*, the Host promised that they should be safe; but perhaps the Action was founded upon the Custom of the Realm, and not upon the special Assumpsit. *Vid. Co. Lit. 89. a. b. 1 Rob.*

1 *Roll. Abr.* 318. *Pl.* 3. where a Man shall be charged with the safe Custody of Goods by a general Acceptance.

If an Host invites one to Supper, and the Night being far spent, invites him to stay all Night, if he is after robb'd, yet shall not the Host be charged, for this Guest was no Traveller. 25 *Eliz. Car's Case* adjudged. 2 *Brownl.* 214. 8 *Co.* 32.

If a Man comes to an Inn with a Horse which he rides, and leaves it with the Host, and goes away from the Inn for several Days, and in his Absence the Horse is stoln, yet shall the Host be charged for it; because he had Benefitted by the Continuance of the Horse with him, inasmuch as he is to be paid for it: And so the Owner is a sufficient Guest to maintain an Action. *Mish.* 5 *Jac. B. R.* in the said Case of *Jelly & Clerk*, per *Cur. Moor* 877. *Noy* 126.

If a Man takes my Horse, and rides him to an Inn, where he is stoln, tho' I am the Owner, I shall not have an Action against the Host, because I am not his Guest. *Trin.* 15 *Jac. B. R.* *Ant. Robinson & Waller.*

If one Joint-Tenant of Goods is robb'd, both may have an Action. *Latch* 127. *Popb.* 179.

If my Servant upon my Business comes to an Inn, and rides upon my Horse, and he is there stoln, I may have an Action against the Host, because the abso-

absolute Property is in me. *Trim.* 15
Jac. B. R. *int.* *Robinson & Walker.* So if
 A. sends Money by his Friend, and he
 is robb'd in his Inn. A. shall have the
 Action. *Vid* 3 *Bul.* 271. *Cro.* *Jac.* 224.
Latch 127. *Popb.* 178.

If a Man comes to a common Inn to
 harbour, and desires that his Horse
 be put to Grass, and the Host puts
 him to Grass accordingly and the
 Horse is stole, the Host shall not be
 charged, because by the Law the Host
 is not bound to answer for any Thing
 out of his Inn, but only for those Things
 which are within the Inn. 8 *Co.* 32. *Caly's*
Case. 4 *Leon.* 96. 2 *Brownl.* 255. *per Cur.*
See Hern. Pleader 250. *Rob. Entr.* 24.

But if the Owner does not require the
 Host to put his Horse to Grass, but
 the Host does it of his own Head, if
 the Horse be stoln he shall answer for it.
 8 *Co.* 22. 4 *Leon.* 96. 2 *Brownl.* 255.

Yet if the Host upon the Command
 of the Guest puts the Horse to Grass,
 and by the voluntary and wilful Neg-
 ligence of the Host, the Horse is stoln,
 as if the Host voluntarily leaves open
 the Gates of the Close, by which Means
 the Horse strays out, and so is stoln or
 lost, an Action on the Case lies against
 the Host. *Pas.* 40 *Eliz.* B. R. *int.*
Messy & Fosset.

It is made a *Quære*, if not a special
 Action upon the Case is intended, and
 not upon the Custom of the Realm, for
 that

that extends to Things only within the Inn. *Vid. Rob. Entr.* 23, 24. *Hern's Plead.* 250.

If I leave my Horse with an Innkeeper to be safely kept for me at such a Rate, and the Hostler lends him out to divers Persons and lames him, whereby he is unfit for my Service, and the Work I have for him to do, I may have an Action against him for this. *Benl.* 171.

Note, But an Hostler may detain my Horse for the Money for his Meat, but not sell or use him. 8 Co. 146. 3 *Bul.* 169, 289.

Yet if the Owner leave him till his Meat comes to as much as the Horse is worth, then he may sell him and take the Money. *Trin.* 3 *Jac. B. R.* But this seems to be only by the Custom of London.

CH A P. XV.

About a Pledge or Pawn.

A Pledge is a Pawn of Goods laid or bound for Money borrow'd *remptorily*, to be the Goods of the Creditor for ever, if the Money be not paid at the Day agreed upon. And this is said to be twofold, either a Pledge in Deed, or a Pledge in Law.

Vid. Appendix, p. 5, 9. Goods pledged, if not redeemed at the Day agreed on, are the Goods of him to whom they were pawn'd.

A

*A Pledge in
Deed.*

A Pledge in Deed, as where one doth pledge a Chattel personal, as Jewels, Plate, or Goods, to another for 20*l.* which he hath borrowed, or doth owe to him; and if he do not pay the Money at the Day that the Party shall have them: In this Case, if he pay the Money, he is to have the Pledge again; if not, the other is to keep them. *Litt. Rep.* 332. *Keilw.* 82.

*The Pawner
upon Tender
may have his
Action.*

And if he pay or tender the Money, he is to have them, or may have his Action of Detainer to recover them, if the other refuse to deliver them; or he may then take his Goods again, if he can come by them.

*A Pledge in
Law.*

A Pledge in Law is said to be where one puts a Garment to a Taylor to make; when he hath made it he may keep it till he be paid for the making it, but he cannot sell or use it till he be paid for it. *Trin. fac.* 1: *B. R.*

*Pledge to a
Taylor.*

*Pledge to an
Hostler.*

So a Horse in an Hostery is said to be a Pledge; for an Hostler may keep him, but not sell or use him till he paid for his Meat; as is before observ'd.

*The Property
of the Pawner
to the Goods
pawned.*

Now in this Case of a Pledge or Pawn the Party that doth pledge the Goods till the Day of Redemption, or Forfeiture, hath such a general Property in them as if in this Time they be casually lost, he must abide the Loss; and they cannot be forfeited by the Party that hath them in Pawn for any Offence of his, nor may they be taken in Execution

curion

cution, or attached for his Debt. Owen's Rep. 124.

And the Party that hath them in *The Property of* Pawn (at first or second Hand) hath such *the Party that* a special Property in them, that if the *hath them in* Thing pawn'd be a Horse, Ox, or the *Pawn.* like, he may work him, if a Cow he may milk her; but if it be any other Thing that will grow much worse by Usage, as Apparel, or the like, he may not use it. Yet other Goods not the Worse for Usage may be used; and if abused, he that put them to pawn may have his Action: So may either Parry have an Action against the other for any Thing done against these Rules. Owen's Rep. 124.

And he that took the Pledge may assign it over to another, who is to hold it subject to the same Condition; and if the Goods be taken away from him that hath them in Pawn, he may have an Action of Trespas, as if they were his own Goods.

And if he that has the Pawn happen to die before it be redeemed, his Executor or Administrator shall have it upon the same Terms he had it. Doct. & Stud. 130. Bro. Attach. 20. Mich. 7 Jac. 1. *Levil's Case. Owen's Rep. 124.*

If one pledge Goods for Money, and no Time is set for the Redemption: It seems in this Case it may be redeemed after the Death of him to whom it is

K

pledged,

pledged, but not after the Death of him that pledged it. *Cro. 2. 224, 225.*

*How to be re-
deemed.*

And the Tender of the Redemption-Money must be to the Executor or Administrator; and when 'tis tendred at the Time by Law appointed for the Tender thereof, if it be refused it is as good as Payment; and the special Property of the Thing is revested in him that did pledge it. *Cro. 2. 244, 245. Telv. 178.*

*No Time set,
and the Goods
are perishing.*

In Case where Goods are pawn'd, and no Time set, and the Goods be perishing, and the Pawner letteth them lie till they be spoil'd, it being Corn, Oil, or the like Thing, and there be no Default in him that hath them in keeping; the Party that pledged shall suffer the Loss of them; and he to whom they were pledged may have Debt for his Money. *Co. 4. 38. Co. Litt. 89. Telv. 178.*

*Cannot be
taken in Exe-
cution.*

And Goods pawn'd may not be put in Execution till the Debt for which they be pawn'd be paid.

*The Goods
pawn'd are
stolen from the
Keeper.*

If one deliver me Goods, as a Pledge, and before the Tender of the Money the Goods be stolen from me: In this Case I shall not answer them. But if he tender me the Money at the Day, and I refuse it, and refuse to deliver the Pledge, and they be after stolen away, in this case I must answer them. *Co. 4. 32, 38. Co. Litt. 89.*

Observation

Observation.

By this it appears, that Goods pawn'd till such a Day may be redeemed before or at the Day,

And that Goods pawn'd without a Day are redeemable any Time during the Life of the Pawner.

How unreasonable therefore are our common Pawn-brokers, who when they have taken in Pawns at the half Value, and without a Day, will seldom keep them above a Year, though they have treble Interest for their Money; but they are so wise as to make no usurious Contract before hand.

But it is the Pawner's Fault he loses his Goods, who usually carries the Pawn himself, and so can procure no Witness.

Indeed if the Thing be of great Value, the Pawn-brokers sometimes take a Bill of Sale with Condition, but they must have a Care the right Owner make it, else that the Pawner be sufficient to answer his Warranty.

They may learn from what has been said to take in Pawns according to Law, but then perhaps they'll have no such Interest.

And let them also consider it is but of Courtesy they now have it, being they seldom agree for any. Yet it may be said of them, that many times they do a

K 2 greater

The surety of a Pawn-broker's ableness of common Pawn-brokers.

Caution against Pawn-brokers.

Caution for Pawn-brokers.

The courtesy of Pawn-brokers.

greater Kindness by lending upon Pawn than a pretended Friend will, and that without any upbraiding or murmuring. *Note*, the Statute of Usury is not pleadable to a Bill of Bottomry. 1 *Lev.* 54.

CHAP. XVI.

Concerning several other Cases adjudged, relating to Trades-men, &c.

Barber shaves with an un-wholesome Razor, &c.

IF a Barber shave me with an un-wholesome Razor, so that my Face is hurt thereby, or if he cut my Face with any Razor, I may have an Action on the Case against him. *F. N. B.* 94. 7 *H. 6.* 5. *Old Book of Entries*, 2.

Note, But doubtless the Damage will lie with respect to the Prejudice received.

Bargeman and Boatmen, or Ferryman.

If Goods be delivered to a Bargeman or Boatman, and in case of a dangerous Storm upon the Water, and to save the Lives of the Passengers, the Bargemen, Boatmen, or Mariners, throw the Goods out of the Boat into the Sea or Water, no Action will lie for this. 2 *Bull.* 280. *Co.* 12. 63. For this is looked upon to be necessary in the Extremity of a Tempest.

My Sheep drowned.

If one put such things into the Water where a Boat goeth, as occasions the

the turning the Boat, and drowning the Sheep therein, an Action lies against him. *F. N. B.* 92. Or if he fright the Sheep out of the Boat into the Water, and they be drown'd.

If a Ferry-man undertake to carry me over the Water, and doth it not, I may have an Action, and without any Consideration, for his Pay is certain. 22 *Ass. Pl.* 41.

So if he undertake to carry anything for me over the Water, and by his Default it taketh Hurt, or is spoiled in or after the Carriage, while in his Custody, I may have an Action against him. *Hob.* 106. See *Mod. Rep.* 85. against a Master of a Ship, for Goods stolen while the Ship lay in the River, not allowed. But see 2 *Lev.* 69. Judgment against the Master. *Vid. Hob.* 17. 3 *Lev.* 258. 1 *Vent.* 190. *Raym.* 170. 2 *Keb.* 866. 3 *Keb.* 72.

So if a Ferry-man take upon him to carry my Horse over the River, and surcharge his Boat, so that my Horse is cast away, an Action lies. 22 *Ass. Pl.* 41. See *Carrier. Postea.* 1 *Rob. Abrid.* 10. *Pl.* 18. *Bro. Añ. sur le Case* 78. *Fitz.* 40.

If a Man delivers Goods to a common Hov-man (who is a common Carrier of Goods) to carry them to a certain Place, and pays him according to the Custom for the Carriage of them, and after for Default of good keeping they are lost, an Action upon the Case lies against him, for by the common

K 3

Custom

Custom of the Realm he ought to have kept and carried them safely. *Mich.* 12 *Fac.* adjudged *int. Keeling & Rich. vide Hob. Rep.* 25. *Hob. fo.* 17. *Cro. Jac.* 330. affirm'd in Error.

When Goods of Value are put into a Lighter, to be conveyed from the Ship to the Key, it is usual for the Master to send a competent Number of his Men to look to the Merchandize, so that if any of the Goods are lost and imbezilled, the Master is answerable, and not the Wharfinger. But if such Goods are sent aboard a Ship the Wharfinger at his Peril must take Care to preserve them. *Molloy* 212. said to have been ruled at *Guild hall, per Hale Chief Justice.*

So if he does not pay him, or make any Agreement, for the Carrier may have his *Quantum meruit.* 1 *Cro. Jac.* 263. 1 *Sid.* 36. *B. R. Met. sur le Case* 78.

Again, If a Man delivers Goods to such common Hoyer-man to carry to a Place, and after delivers them (being of good Value) to another to keep safely in the Boat, and does not discharge the Hoyer-man, and after they are lost through Negligence, an Action upon the Case lies against him. *Mich.* 12 *Fac.* *B. R. int. Keeling & Rich. Hob. Rep.* 25. same Case, *vide Hob. fo.* 17. *Cro. Jac.* 330. *ut supra.*

If A. delivers Goods at York to B. (who is a Water-Carrier between Hull and

and *London*) to carry them from *Hull* to *London*, though the Agreement is to carry the Goods from *Hull* to *London*, and no Mention is made of the Carriage to *Hull*; yet if the Goods are lost *B.* shall answer for them, for upon his general Receipt of them at *York*, he is liable. *Pas.* 13 *Car.* 2. *int.* *Nichols & Moor.* 1 *Sid.* 36. 1 *Rob. Abr.* 338. *Pl.* 2.

If a Merchant lades Goods aboard a Ship, to be transported at a reasonable Reward of Freight to be paid to the Owners, and in the Night-time while the Ship rides in the River of *Thames*, notwithstanding a competent Number of Men are left on board for the Guard of the Ship and Goods; yet several Persons under Pretence of pressing Seamen, seize on the Men a board, and take away the Goods, an Action will lie against the Master, for in Effect he is no more than Servant to the Owners, and has no Property either general or special, but the Power he hath is given by the Civil Law. *Per* 3 *Mod.* 323. *Molloy* 209.

For the Master, he is paid by the Merchants; for the Merchant pays the Owners, and the Owners pay the Master; so that the Money of the Merchant is but handed over by them to the Masters. *Hill.* 23, 24 *Car.* 2. *int.* *Mors & Sluce.* 1 *Vent.* 190, 238. upon a special Verdict adjudged. *per Tot. Cur.* and said, Tho' by the Admiral Law the

the Master is not chargeable *pro damno fatali*, as in the Case of Pirates, Storms, &c. where there is no Negligence in him, yet because this Ship was within the Body of the County, this Case must not be measured by the Rules of that Law. *Vide Raym.* 220. 3 *Keb.* 72, 112, 137. 1 *Mod.* 85. same Case, but in the last said the Verdict was given for the Defendant. 2 *Lev.* 69. same Case adjudged, 3 *Lev.* 259 cited, and the Lord Chief Justice said the Master is chargeable in Respect of his Wages, and the Proprietors in Respect of the Freight. *Molloy* 209, 210. same Case.

For he must see all things forth-coming which are delivered to him, let what will happen (the Act of God, or an Enemy, Perils and Dangers of the Sea only excepted) but for Fire, Thieves, &c. he must answer.

In an Action against a common Hoyerman from *Walton to London*, the Defendant pleads that the Boat and Goods were sunk and lost upon the *Thames*, without that, that they were lost for Defect of good Keeping, and an Issue thereupon joined. *Vidian's Ent.* 37, 38.

If *A.* and several others take their Passage in a Ferry-boat, and being upon the Water a Tempest arises, so that they are in much Danger of being drown'd, upon which to preserve their Lives, several of the Goods are cast overboard, among which a Pack of Goods

Goods of *A.* of great Value is thrown over, *A.* shall have no Action against the Bargeman; adjudged *Micb.* 12 *fac.* 2 *Bulst.* 280. *Coke* said it had been so adjudged, *sed vide Al.* 93. & *quere.*

But when and how by the Marine Law, he shall have Averidge, &c. *vide Molloy* 246, 247. So if any Passengers of Necessity for the Safeguard of his Life throw it overboard, no Action lies against him. 12 *Co.* 62.

For the Manner of declaring against a Lighterman, by the Common Law. *Palm.* 523. and no Promise alledged, neither that he was a common Lighterman; but this is said to be obscurely reported *int. Symonds & Dorknel; sed quere* if not implied as laid. *vide Hob.* 245.

If it be founded upon a Promise, he need not shew that he is a common Carrier, &c. *Cro. fac.* 262. 1 *Sid.* 245. 1 *Keb.* 852, 870. And where Hire is taken, a Promise is implied.

If in an Action upon the Case against a Lighterman the Plaintiff declares, that the Defendant so negligently govern'd his Lighter, that it took Water and spoiled the Goods of the Plaintiff, *Ad damnum*, &c. the Declaration is good without a more special Allegation how they were spoiled. *Palm.* 528. *per Cur. int. Symons & Dorknell Hard.* 163. *vide postea* concerning a Carrier.

If

*Butler spills the
Wine, &c.*

If my Butler shall break my Hamper, or the like, I may have an Action against him. 18 *Ed.* 4. 27. 2 *H.* 7. 1.

*Bailiff loſeth
my Goods, &c.*

If my Bailiff that hath the keeping of my Cattle, kill them, or sell them, or lend them to another that shall kill them, or if having the Oversight of my Grounds he shall, without Warrant from me, cut down my Trees, or make other Waste thereof, I may have an Action against him. 18 *Ed.* 4. 20, 27. 1 *Cro.* 777, 778. *Bro.* 99. 12 *Ed.* 3. 14. 2 *H.* 7. 1. See more hereafter in Master and Servant.

So if Baker, Butler, Brewer, &c. sell me unwholesome Victuals, &c. as before observed. *Vide* against a Cook for selling him a corrupt baked Capon which caused him to vomit horribly, and *vide* 1 *Rol. Abr.* 90. *Pl.* 2. So against a Taverner that sells and gives me Meat and Drink, which makes me very sick. 9 *H.* 6. 53. *Cro. Jac.* 197. 2 *Rol. Rep.* 6. 1 *Rol. Abr.* 88. *Pl.* 6.

*Carpenter
buildeth my
House in ano-
ther Form.*

If a Carpenter undertake to build me a House in one Form, and buildeth it in another, I may have an Action against him. *F. N. B.* 145. *G.* 2 *H.* 4. 9. 24 *H.* 7. 41. 20 *H.* 6. 35.

*Carrier spoils
my Goods by
Negligence.*

If a Carrier undertake to carry my Goods safe, or undertake to carry my Wine or Oil, and break the Pipe or Vessel by Negligence, an Action lies against him. 2 *H.* 7. 11. *Libr. Intr.* 2. *D. Sect.* 1. *Regist.* 110.

Or

Or if such a common Carrier (albeit he be but newly a Carrier, or carry but for some few Persons only) if he carry for Money, take any thing from me to carry, and do hurt or impair it himself, or suffer it to be hurt by another by his apparent Negligence, as if he overload-^{Losses my} ed his Horse, and by that means fall in-^{Goods, &c.} to the Water, or drive by Night, or out of the Way, and is thereby robbed, I may have an Action against him *Micb. Fac. B. R.* And yet 'tis said, that a Carrier may by special Agreement in his undertaking of the Carriage, avoid an Action. *Fitz. 14, 15. Doct. & Stud. 139.* See 2 *Vent. 78. Style 370.* See more of this before.

Note, By the Custom of the Realm, if a common Carrier takes in Goods to carry to a certain Place, he ought to carry them safely, and if he loses them an Action lies against him; so if damaged. *Palm. 523. Hern's Pleader, 76, 77.*

And tho' a Declaration may be good, without a Recital of the Custom of the Realm, yet the best way is to recite it. *Fals. 17 Car. 2. inter Matthews and Hopkins. 1 Sid. 245. per Cur.*

But tho' it is said as a Custom, yet in Truth it is the Common Law. *Hob. 18.* And in such Case 'tis usual to declare *Qd scdm. Legem & consuetudinem Ang. &c.* For it is not a Custom confined to a particular Place, but extends to all the King's People. 3 *Mod. 227.* *vide*

vide Hard. 485, 486. 1 *Keb.* 852, 870. *Rob. Ent.* 103. See a special Declaration against a Letter-Carrier, for the Non-delivery of a Letter delivered out to him, at the General *Post Office*.

If a Man be no common Carrier, yet if he takes Hire he may be charged upon his special *Assumpsit*. *Cro. Jac.* 262. 3. adjudged.

If a Man delivers Goods to a common Carrier to carry, and the Carrier is robb'd of them, yet he shall be charged for them, because he had Hire for them, and so implicitly took upon himself the safe Delivery of the Goods so to him delivered, and therefore shall answer for the Value of them, if robb'd. *Hill.* 36 *Eliz.* B. R. *int. Woodleeffe and Curtis* resolved. *Moor* 462. *Pl.* 650. *Owen* 57. *Co. Lit.* 89

Vide 4 *Rep.* 84. *Owen* 57. 2 *Saund.* 380. 2 *Mod.* 270. Same Point adjudged.

If *A.* delivers a Box to a Carrier to carry, and he asks what is in it, and *A.* tells him a Book and Tobacco, and in Truth there is 100 *l.* besides: Yet if the Carrier is robb'd, he shall answer for the Money. For *A.* was not bound to tell him all the Particulars in the Box, and it was on the Part of the Carrier to have made a Special Acceptance. *Mich.* 24 *Car. int. Kenrigg & Eccleston.* *Al.* 93. ruled by *Rolle* at the *Nisi prius* at *Guild-Hall, London*: But in Regard of the

the intended Cheat to the Carrier he told the Jury they might consider of it in Damages, but yet the Jury gave the Plaintiff 97 *l.* Damages, abating 3 *l.* only for Carriage, which 'tis said seem'd to be hard.

1 *Ventr.* 238. *Hale* said a like Case had there lately been adjudged.

Note, a special Acceptance would have excused the Carrier. 1 *Ventr.* 238. *per Hale.* 1 *Keb.* 135. *Bul.* *vide Dr. & Stud.* 130.

But it's said if a Man carries a Bale of Wood to a Carrier, and warrants to him to be but of the Weight of 800 *l.* and prays him to carry it to such a Place, and that he should have 2 *s.* for the Carriage of every 100 Weight, where-as it was in truth of the Weight of 2000 *l.* but the Carrier giving Credit to the Promise aforesaid carries it to the Place appointed, but by the Deceit in the Weight, his Waggon, in which he carried it, was so overloaded, that by their excessive Labour, he loses 3 of his Horses that drew the Waggon. An Action upon the Case lies against him upon this Warranty, tho' he might have weighed it presently upon the Receipt; for he might take it upon the other's Promise without weighing it. *Mich.* 13 *Fac. B. R. int. Bayly and Merril*, for the Weight is not discernable by the Sight; so of the Length of Things. *Vide* 1 *Roll. Rep.* 376. 1 *Roll. Abridg.*

Abrid. 97. *Cro. Fac.* 386. *sed vide* 1 *Roll. Rep.* 275. where *Croke* seems *Con. vid* 11 *Ed.* 4. 6. *A. Fitz. Deceit* 23. *Bro. Deceit* 25. 3 *Bul.* 95.

But it is said the Action does not lie in this Case, if he had only affirm'd to the Carrier that it was 800 Weight, for this is no Warranty. *Vid. Popb.* 243. *Cro. Fac.* 386. 387. same Case adjudg'd 1 *Roll. Rep.* 275. 3 *Bul.* 94, 95. same Case. *Adjournatur*, and no Judgment ever pronounced, for the Plaintiff perceiving the Court against him moved it no more.

If *A.* hires *B.* to carry a Load of Timber from one Town to another, to be unloaded there at such a Place as *A.* shall appoint, and *B.* gives Notice to *A.* that he will bring it such a Day, and requests him to appoint a Place where he should lay it, and he brings it accordingly, but *B.* will not appoint any Place where it shall be laid, so that the Horses of *A.* are kept so long in the Cart, that being hot they catch Cold and die; Yet *A.* shall have no Action against *B.* for he might have taken his Horses out of the Cart and walk'd them or put them in a Stable. Or if *B.* would not have appointed a Place, as soon as he came there, he might have unloaded in any convenient Place, so that the Injury which the Horses received was thro' his own Default. *Trin.* 29 *Car.* 2. *int. Virtue* and *Bird.*

Bird. 2 *Lev.* 196. adjudg'd. *vide* 1 *Ventr.* 310 and 3 *Keb.* 766. same Case adjudged.

If a common Carrier has Goods delivered to him to carry to a certain Place, and a Stranger takes them out of his Possession, and converts them to his own Use, an Action of Trover and Conversion lies for the Carrier against him; for he had a special Property in the Goods, and to make Satisfaction for them to the Owner. *Trin.* 15 *Car. int.* *Godwyn & Richardson*, upon Evidence in a Trial at *Guild-Hall* upon Not Guilty pleaded; *vide* 1 *Mod.* 31. But the Owner in such Case, 'tis said, may not charge the Carrier with a Trover and Conversion, but an Action upon the Case upon the Custom of the Realm to carry Goods safely, and to deliver them as he is appointed. *Mich.* 14 *Car. B. R. int.* *George & Wiburn.* 3 *Keb.* 422. But *Twisden* said, and 'twas affirm'd by the Bar to be the common Practice to bring Trover.

If a Chirurgion or Physician undertake a Cure, and neglect it, or apply contrary Medicines by himself or Servants, an Action on the Case will lie. 19 *H.* 6. 49. 11 *H.* 6. 18. 48 *Ed.* 3. 6. 11 *Ed.* 4. 6. *Reg. Orig.* 105. *B.* 112. and this where no Warrant of Cure is; yet without Warrant, &c. if he does his Best Cure. he is excusable; but if he warrant or promise a Cure, for a good Consideration, he must do it, or will be liable to an

*Chirurgion and
Physician neg-
lect their Pa-
tient.*

an Action. 17 *Ed.* 4. 25. *Doct. & Stud.* 105. *Plow.* 305. 2 *Bull.* 312. and there 'tis said, if one take upon him to cure another of a Wound, and cannot do it, an Action lieth.

*Advice for
Good-Will.*

But if a Man that is no Physician or Chirurgion professed, shall for nothing, but out of Good-Will, advise a Man to use a Medicine that doth not so well agree with him, or shall negligently apply a Medicine without taking Money, no Action will lie; so if I give one Counsel to give a Medicine to a Horse, and do it for nothing, and the Horse die of it, 'tis said no Action will lie; but if I take Money, or there be Malice in it, and it be done of Purpose, it is very questionable. 19 *H.* 7. 49. 48 *Ed.* 3. 6.

*Advice for
nothing.*

Note, If there are two Partners in Trade, and one breaks, the other shall not be charged with the Whole: But if there are two Partners, and one of them die, the Survivor shall be charged with the Whole. *Mod. Rep.* 45.

If a Taylor spoils Cloth, if he undertakes to make Garments, an Action will lie against him. 1 *Vent.* 268. 3 *Keb.* 449.

If a Farrier, for Consideration, undertake the Cure of my Horse, or a Smith the Shoeing of my Horse, and doth it not well, an Action lies against him. 14 *H.* 6. 18. 19 *H.* 6. 49. 46 *Ed.* 3. 2. 1 *Saund. Rep.* 312. 1 *Roll. Abr.* 10. *Pl.* 5. 96 *Pl.* 6. So if he apply unwholesome Me-

*Ferrier and
Smith.*

Medicines. *Bro. Ad.* 24. But if no Default be in the Farrier, this Action may not lie. 27 *Aff.* 56. And yet 'tis said, his Warranty or Promise to cure will make him chargeable if he do it not. 43 *Ed.* 3. 33. 28. 43 *Ed.* 1. 6. 2 *Bulst.* 334. And it will not be sufficient to say he did his best. 19 *H.* 6. 49. *Reg. Orig.* 119. *B.* See a Diversity where he warrants the Cure, and where not. *Bro. Ad.* *sur le Case* 25.

Also an Action will lie against a Smith that refuseth to shoe my Horse, where he hath Necessaries to do it, and I tender him his Pay for it. 14 *H.* 6. 18. 18 *H.* 7. 50. *Pl.* 4. So if he cly my Horse in the Shoeing of him.

And if I send my Servant about an important Business, as to pay Money, &c. and the Smith cly his Horse, and lame him, so that he cannot come in Time to pay his Money, or have any special Loss by it; it's said, the Master and Servant may each of them have this Action against him. 2 *Bulst.* 334. And it's said, if I deliver him to one Smith, and he delivers him to another Smith, who pricks him, I may have an Action against this other. 12 *Ed.* 4. 13. *Fitz. Ad.* *sur le Case* 19.

And it is said further, That if a Smith undertake to shoe my Horse and prick him, so that I lose the Use of him for a Time, whether the Horse be brought to him by my self or Servant; and albeit

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Promise and Warranty is cure.

Smith refusing to shoe my Horse.

Smith cly my Horse.

Smith pricks my Horse.

there be no Agreement, Warranty, or Wages promised, or given, yet his misdoing is actionable. 46 E. 3. 19. *Aff.* 35. *Fitz.* 94. 17 E. 4. 43. 11 E. 6. 4. 14 H. 6. 18. 3 H. 6. 36. *Reg. Orig.* 106. *A.*

And generally where any Artificer shall undertake to do Work for me, and doth not do it well, I may have an Action. 46 E. 3. 2. 18 E. 3. 6. N. B. 94.

So if Men of other Trades upon Agreement, with Consideration, undertake the Work of their Trade, and do it not well, an Action lieth against them. 46 E. 3. 19. 14 H. 7. 22. 2 *Bulstr.* 196, 197. 1 *Saund. Rep.* 312.

If I be a Prisoner, and the Gaoler abuse me, by putting Irons on me, or putting me in the Stocks, or the like, for my Money, being a Prisoner for Debt, or as my Case is, I may have an Action. N. B. 93. *H.*

If any one shall take away, intice away, or retain my Servant from me, I may have an Action. 9 R. 2. 52. 11 H. 22. 21 H. 6. 9. *Vid.* 2 *Lev.* 63.

Note, But if a Man retain a Servant of mine that is departed from me without Leave, and had no Hand in the Procurement of him to leave my Service, no Action will lie. *Leon. Pl.* 324.

If one threaten my Wife, Servants, or Children, that he or some other will do them some Hurt, and doth lie in wait for it, so that thereby they are put into Fear, and durst not follow my Business,

General Rule.

*Gaoler and Prisoner.
Prisoner for Debt abused.*

Inticing away my Servant.

Threatning and lying in wait to hurt my Servant.

finess, or go about my Work; or my Servant departs out of my Service, or whereby I have any special Damage, I may have an Action. But it will not lie for a bare Threatning, without lying in wait, or Loss by it. 7 Co. 1. *Keilw.* 40. 9 H. 7. 7. *Benl.* 15. 7.

Note, If one challenges my Servant as his, so that he dares not go abroad, it seems no Action lies. 2 *Bulst.* 134.

So if one beat my Servant, or hurt, ^{*Beating my*} imprison, or maim him, if by this I ^{*Servant, &c.*} lose his Service, albeit he be but my Servant at his own Pleasure, I may, it's said, have an Action. 21 H. 6. 9. 9 Co. 113. *Reg. Orig.* 94. B. 102. *Libr. intr.* 613. B. *Seet.* 19. 674. C. *Seet.* 1.

If a Man dig a Pit in the Highway, and my Servant fall therein, and is there- ^{*My Servant*} by hurt, and not able to do his Work in Time, each of us may have an Action. 46 *Ed.* 3. 19. 2 *Bulst.* 134. 334. *Style's Rep.* 335. *Old Book of Entries, fol.* 2. *Vid.* 1 *Rol. Rep.* 124. So for digging a Pit, *per quod. f. S.* for whose Life I held Lands, was drowned. 1 *Keb.* 847. See after.

If my Servant, or a Stranger shall ^{*My Servant*} without Authority from me, land my ^{*Lands my Goods*} Goods out of a Ship, before the King's ^{*before Custom*} Customs be paid, by which the Goods are forfeited, I may have an Action against him for it. 2 *Cro.* 266. *Lanc's Rep.* 266. 43 *Ed.* 3. 3.

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If

*Dog bites my
Servant.*

If one keep a Dog that doth use to bite Men or Cattle, and he knows thereof, and yet suffers him to continue and bite my Child, Servant, or Cattle, whereby I suffer any Damage, or lose the Service of my Servant, or the like; I may have an Action against the Owner of the Dog. *Dyer* 25. *Pl.* 162. 29. *Pl.* 195. *Libr. intr.* 616. *B. Sect.* 1. *Reg. Orig.* 116. *Vid.* 1 *Vent.* 295. *Cro. Car.* 254, 487. 2 *Sid.* 127. 2 *Bul.* 291. 3 *Bul.* 76. And 'tis said, it must be proved in Evidence, that he knew he was accustomed to bite, otherwise the Action will not lie. *Dyer* 25. *b. Pl.* 162. adjudged.

*My Servant
neglects to pay
Money.*

So if my Servant or Bailiff be to pay Money for me to one, and doth it not, by which I suffer Loss, I may have an Action. 20 *H.* 6. 9.

*Keeps not my
Cattle safe.*

If my Bailiff promise to keep my Cattle safe, and doth not so, I may have an Action against him. *Li. intr.* 9. *A. Sect.* 1. *fo.* 3. *Sect.* 1.

Note, But if he promise to keep my Goods, and after refuse to undertake them, 'tis said, no Action will lie. *Doct. & Stud.* 102. *B.*

*Refuses to do
the Work of his
Place.*

If my Servant refuse or omit to do the Work of his Place, and I have Damage by it, I may have an Action. *Reg. Orig.* 101. So if he do it not well, and tho' I have a Covenant from him, yet I may have an Action on the Case. 20 *H.* 6. 36. 14 *H.* 6. 18. 3 *H.* 6. 36.

Or

Or if my Workman be retained to do my Work and do it amiss, I may have this Action. *ibidem.*

So if my Plowman drive my Cattel *Plowman.* so hard, as to kill or hurt them, or my Shepherd suffer my Sheep to be drown'd *shepherd.* or turn scabby, by his Neglect, I may have an Action. 5 Co. 13, 14. 2 H. 7. 1 & 11. 18 Ed. 4. 20. 27 Bro. 99. 7 H. 4. 14. Dyer 121.

And generally if my Bailiff or other *General Rule.* Servant, contrary to his Trust, shall either willfully or negligently hurt me in my Business, wherein he is trusted for me; I may have an Action against him; for his Wages is certain, and he hath his Action to recover it. 2 H. 7. 11. 3 H. 6. 36. See 1 Bro. 777, 784.

But if a Mariner or Ship-Carpenter *Wages lost.* run away, he loseth his Wages due. 1 Mod. Rep. 93.

'Twas said if the Servant sells his Master's Corn for 20 l. and receives the Money, and converts it to his own Use, that the Master, may have an Action of Trover and Conversion against him, for that the Possession of the Servant was the Possession of his Master. *Pas.* 40. *Eliz. int. Holyday & Hix. Cro. Eliz.* 638. *Owen* 131. *Noy* 12. *Bul. Cro. Eliz.* 661, 746. This Judgment by the Opinion of all the Judges except two, was reversed in the Exchequer-Chamber; for Money being a thing that could not be known, it was said the

Property was never in the Master but in the Servant.

Several other Cases adjudged, necessary to be known by all Farmers, Country-men, &c.

For disturbing me in my Way, Watercourse, &c.

If one disturb me in my Way to my House or Land, by stopping or straitning of it, or stop or turn my Water coming to my House, Mill or Ground, or my Light to my House, or if one stop a Ditch or River, or set up Floodgates, so as to make the Water overflow and drown my Ground adjoining, I may have an Action of the Case against him for it.

But if a Man stop or turn Water only to amend his Banks or Mills, having by Custom and Use done it, this is justifiable. 4 Co. 86. 1 Co. 50. *Dyer* 320. *Litt. Rep.* 267. 1 *Vent.* 274. 3 *Keb.* 528. 2 *Vent.* 138, 185, 288, &c. 3 *Lev.* 266.

Diverting a Watercourse, and drowning my Ground.

If one stop a Stream of Water and put it out of its old Course, and by that means my Ground is drown'd, I may have an Action. *New Book of Entries, fo.* 18. *Dyer* 248.

Diverting Water from my Mill.

If I have an ancient Mill, and an ancient Watercourse to maintain it, and if any Man shall divert it that I cannot have the Use of it to my Mill, as formerly, I may have an Action on the Case against him. *Style's Rep.* 370. *Dyer* 195.

195, 248. 4 Co. 86. *Vid.* 3 Lev. 133. Not saying an ancient Mill, nor Time out of Mind, but only diverting the ancient Course of Water to his Mill, and Judgment for the Plaintiff. *Vid.* Lev. 209. *Mod. Rep.* 48.

If one disturb me in my Walk, Fold or Foldage, Watering-Place, Church-way or High-way, Isle, or Seat in the Church, or any other Profit appendant, which I have had Time out of Mind, as belonging to my ancient House by Prescription, I may have an Action. 4 Co. 89. 5 Co. 1. 76. *Dyer* 250, 320. 12 Co. 105. 1 *Bullst.* 47, 69. 2 *Bullst.* 14, 129. *Benl.* 89. 2 *Cro.* 43, 123, 180, 263, 605, 606.

But if a Man be disturb'd in going in a common High-way, or if a Ditch be made overwhart the Way, so that he cannot pass, yet he shall have no Action for this, for the avoiding Multiplicity of Suits; for if he may, every Man may have such an Action, and the Law has provided another proper Remedy for this common Nuisance, *viz.* a Presentment in the Leet or Turn. *Co. Lit.* 56. *Trin.* 41 *Eliz.* B. R. *int. Finex & Hovenden.* 4 Co. 18. a. 104. 9 Co. 113. *Vaugh.* 341. *Moer* 183. *Pl.* 321. *Cro. Eliz.* 664.

But if a Man put Logs in the Highway, and my Horse stumbles upon them and throws me, and thereby I receive Damage by Wounds, &c. I may have

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an

*Disturbing me
in my Walk,
Fold or Fold-
age, &c. is
which I can
prescribe.*

an Action upon the Case against him for this special Damage received, tho' this laying of Logs in the Way be a common Nuisance. *Hill. 15 Jac. B. R. adjudged int. Fowler & Saunders. Vide Cro. Jac. 446. 1 Keb. 447. 2 Jones 157.* for making a Ditch cros the Highway, so that he could not pass with his Carriage of Tithes, but was constrained to carry them a longer and more difficult Way, this being special Damage. *Br. Nuisance. 1. Bro. Act. sur le Case 6.*

So if a Man makes a Ditch overthwart a common High-way, so that my Horse falls in the Ditch, or I have any other particular or special Damage, I may have an Action: Resolved *int. Finex & Hovenden, 4 Co. 18. a. Cro. Jac. 491, 470. 9 Co. 113. Cro. Eliz. 664.*

Upon a special Damage by a foundrous Way, an Action lies against a Corporation or private Person that is bound to repair, but if a Township, &c. not corporate, &c. the Party as to his special Damage, is without Remedy. *Vaugb. 340. but see Bro. Action sur le Case 93. Bro. Nuisance 23.*

For the Loss of Common, *Vide 2 Brownl. 148. 1 Co. 113. Co. Ent. 14. Pl. 8. 12. Godb. 343. 2 Rol. Rep. 308. 9 Co. 111. Crogate & Marys. Jenk. Rep. 144. against the Horses of a Stranger. Keilw. 47. a. 1 Rol. Abr. 403. Pl. 5.*

Note,

Note, Prescription, Time out of Mind, *Prescription and Custom, what.* is a Course or Use of any Thing for a Time beyond the Memory of any Man living; and one particular Person may prescribe against another; and it is called a Custom, where, by Continuance of Time beyond Memory, divers Persons have gotten a Right. *Kitch.* 104. 4 Co. 32.

If one disturb me in my Common, *Disturbing me in my Common.* that I cannot have it as liberally as formerly I have had, an Action lies. 1. Cro. 390. *Hetl.* 143. *Noy's Rep.* 30. *Style's Rep.* 164.

If one inclose Land which should lie open in a Manor, by which the Commoners have not enough for to common their Cattel, or eat up the Common so much that the Commoners have not enough; in this Case, it's said, every Commoner may have his Action against him. 9 Co. 113. *F. N. B.* 145. 21 *H.* 7. 40.

If the Inhabitants of a Parish have a Watering-Place by Prescription, and be disturbed in it, each of them (as it seems) may have an Action for such Disturbance. 27 *H.* 8. 27. *Finche's ley*, 187. *Cro. Eliz.* Plac. 664. Co *Lit.* 56. 1 *Rol. Abridg.* 110. Pl. 3.

If one dig a Pit in a place where I have Common, by occasion whereof my Beast there going falls in it and is hurt, I may have an Action. 2 *Cro.* 158. falls into it. 1 *Vent.* 295. *Jones* 205.

But if a Man digs a Pit in his own Waste within 36 Foot of the Highway, and the Mare of B. falls in and dies there, B.

B. shall have no Action; for it was the Default of *B.* that his Mare escaped into the Waste. *Gro. Jac.* 158, 159.

CH A P. XVII.

Lessor and Lessee.

Also see Chapter 19.

*Lessee suffers by
my House to be
burnt.*

IF my Lessee at Will, by Negligence, suffer the House he holdeth of me to be burnt, I may not have such Action against him as I may against him that keepeth not well his Fire, or fireth his own House, by which my House is burnt, being near to his; but if it were voluntary, an Action may lie. 1 *Gro.* 10. 777, 784. 8 *Ed.* 4. 19. *Pl.* 30. *Benl.* 153. 2 *H.* 4. 18. *Libr. Intr.* 8. *A. Sess.* 1.

*A Stranger
burneth it.*

But if it be done and occasioned by a Stranger out of Malice, or if it come suddenly no Man can tell how, he is not chargeable for his Neighbour's House that is burnt by the burning of his House. 42 *Ass.* 8. 2 *H.* 4. 18. 33 *H.* 6. 1.

Yet it's said that if my Fire by Misfortune burn the Goods of another Man, he may have an Action upon the Case against me. 2 *Hen.* 4. 18. *Fitz. Ass. sur le Case* 25. *Bro.* 30.

Again, it's said, if Fire (I knowing nothing of it) suddenly break out in my

my House, and burn my Goods and also the House of my Neighbour, he may have an Action against me. 42. *Ass.* 9. but it was adjudged there the Action did not lie, because 'twas *vis & armis*. 9 *Co.* 50. *b. vide Fitz. Act. sur le Case* 43. *Bro. Verdict.* 50.

If my Servant puts a Candle or other Fire in any Place in my House, and this falls, and burns all my House and the House of my Neighbour, he may have an Action against me. 2 *H.* 4. 18. *Note the Law is altered by Stat. 6 Annæ c. 31. vide appendix Tit. Fire.*

The same Law is if my Guest does it. *ibid. vide Popb* 143. *Fitz.* 25. *Bro.* 3. The same Law is of him that enters my House with my Leave. *Fitz. & Br. ut supra.* 1 *Brownl.* 197.

The same Law is of him that enters my House with my Knowledge. 2 *H.* 4. 18. *Fitz. ut supra.* But if a Stranger against my Will puts Fire in my House, by which my Neighbour's House is burnt, no Action will lie against me. 2 *H.* 4. 18. *Fitz. Act. sur le Case* 21. *Bro.* 30. *vide Brownl. Ent.* 29. *Fitz. Double Plea.* 31.

This Action lies by the general Custom of the Realm against *Patremfamilias*, and therefore not against a married Woman, or a Servant, yet in *Thomp. Ent.* there is a Declaration in the Case against a Servant. 1 *Rol. Abridg. Fd.* 2.

In

In what Actions the Wife shall be made a Defendant together with her Husband, *vide. 1 Rol. Abr. 348.*

If *J. S.* being at the Door of his House, shoots at a Fowl with a Gun, and by this Means fireth his own House, and the House of his Neighbour, he may have a general Action upon the Case against him; for the Injury is the same, tho' this Mischance was not by common Negligence, but by Misadventure. *Mich. 24 & 25 Eliz. Cro. Eliz. 10. per Cur.* But he must not declare upon the general Custom of the Realm. *Fitz. Aff. sur le Case 25. Bro. Abb. sur le Case 30.*

If *A.* leases a Stable to *B.* for one Week, and so from Week to Week, at Will, by Vertue whereof *B.* is possessed, and six Weeks after by his Negligence, the Stable is burnt down, it's said an Action upon the Custom of the Realm lies not against him, because of the Privy between them; and the Lease was but for 3 Weeks at most, and after he was Tenant at Will, against whom no Action lies for negligent Waste. *Pasch. 5. Will. & Ma. int. Panton & Isham 3 Lev. 259. adjudged upon a special Verdict. vide Cro. Eliz. 777, 784. 5 Co. 13.*

And the Law is general in this, That if my Neighbour and his Servant, or any other that shall come into his House by his good Will or Agreement, shall wil-

*My Neighbour
burneth his
own House and
fireth mine.*

willfully fire his, and thereby my House, I may have an Action; but if it be done against his Will, no Action lieth. 2 H. 4. 18. *Old Book of Entries. fol. 8.*

If the Lessor out me that am an Executor of the Lessee for Years, or my Executors after me, of the Term, each may have an Action on the Case or an *Eject. Firmæ. Fitz. 92. G. 4 Co. 94.*

Lessor outs the Lessee for Years.

If the Lessee keep but his Lessor committing to view his House; if any Waste be done, the Lessor may have an Action against him. *Hill. 20 Jac. B. R. 2 Cro. 478.*

Lessee keeps out the Lessor.

If a Lessee for Life make a Lease for Years, and the Lessee for Years commits Waste, for which the Lessee for Life is punished: in this Case he may have an Action against the Lessee for Years, and recover as much as the Lessee for doth or may recover of him. *Pas. 38. Eliz. B. R. Gemmies's Case.*

Lessee for Life leases for Years, and Lessee for Years commits Waste.

So if the Lessee for Years of a House, lease it for part of the Time, and that Time expire, and the Lessee continue in full Possession, and pull down Part of the House, the first Lessee may have an Action of the Case against him. *Trim. 6 Car. 1. B. R.*

Lessee for Years leases for part, and 2d Lessee pulls down part of the House.

If a Tenant by *Elegit* hold the Land after Money is tendred to him, and cut down the Trees upon the Land, an Action will lie for it. 21 *Ed. 3. 16.*

Tenant by Elegit holds the Land after the Money tendered.

If

*Lessee suffers
Loss by the Les-
sor's Neglect.*

If my Lessor that is bound by Law to repair my House, or to pay Subsidies, or the like, neglect it, and I suffer thereby, I may have an Action on the Case against him. *Dyer* 36. *Pl.* 37. 21 *H.* 7. 12. See after, concerning Landlords and Tenants, *Chapter* 19.

For not Folding his Sheep upon the Plaintiff's Land, whereby the Plaintiff lost the Benefit of Foldage. 2 *Ventr.* 138.

If one take Toll of me where none is due, I may have Trespass or Case at my Choice. 4 *Co.* 60, 94.

*For taking of
Toll and none
due.*

And if a Miller be to grind at his Mill my Grift Toll-free, and he refuseth to do it, I may have Case against him. 43 *Ed.* 4. 24. *Cro.* 130.

*Miller refuseth
to grind Toll-
free.*

So if one that ought to pay Toll in Fair or Market refuse so to do, Action lieth. 7 *H.* 4. 4. *Pl.* 11.

*Refusing to pay
Toll in Fair or
Market.*

Note, But if he sell and pay no Toll, the Action lieth not. 7 *H.* 4. 45. 20 *H.* 7. 1.

*Tenant's refuse
to grind at the
Lord's Mill.*

If the Tenants refuse to grind at the Lord's Mill, as has been used Time out of Mind, Action lies against him that refuseth. *Brown* and *Goldsb.* 18. 1 *Vent.* 167. 2 *Vent.* 292. *Saund.* 1. 15. 2 *Keb.* 803, &c.

*Hindering the
Parson to re-
ceive his Tithes.*

If one hinder the Parson to receive his just Dues of Tithes, or other Dues, he may have an Action on the Case against him. 2 *Co.* *Instit.* 650.

*Parson will not
take away the
Tithes.*

So if I set out my Tithes duly, and the Parson will not take them away in con-

convenient Time, Cafe lieth against him.

So if one that hath bought my Hay *The Buyer of my Hay will not take it away in time.* on my Ground shall suffer it to lie so long upon my Ground, or in my House, that I be damaged by it, I may have Cafe against him. *Bro. Aff. 48. Godb. Rep. Pl. 424.*

If the Parson of the Parish be bound by the common Custom to keep a common Bull or Boar, and do it not, and any Parfishioner hath lost thereby, he may have Action on the Cafe, for the Custom is reasonable. *1 Cro. 569.*

If I have Right to Corn growing, *Hindring me from taking Emblements,* Grass, Fruit of Trees, Hemp, Flax, or the like things, as Emblements, not having any Possession thereof, nor of the Soil or Ground whereon it groweth, and the Law gives a reasonable Time to take it away; and if within this Time another disturb and hinder me in the taking of it, I may have an Action on the Cafe for my Relief. *Co. Litt. 56. Keilw. 125, 160.*

So if I be to have Corn that I have sowed upon another Man's Land, and be disturbed in the taking of it, I may have Cafe. *Finch ley 187.*

Note, Emblements be the Profits of Land which have been sowed; but the Word is sometimes taken more largely for any Profits that arise, and grow naturally from the Ground, as Grass, Fruit, Hemp, Flax, &c. If Tenant for Life sow

*Lessor shall
have them.*

sow the Land, and afterwards die, the Executor of the Tenant for Life shall have the Emblements, and not he in Reversion: But if Tenant for Years sows the Lands, and before he hath reaped, his Term expires, there the Lessor or he in Reversion, shall have the Emblements.

Co. 11. fo. 51. And although 'tis commonly held, that if a Man leases Lands at Will, and after the Lessee sows the Land, and then the Will is determined, that the Lessee shall have the Emblements, yet if the Lessee himself determines the Will before the Severance of the Corn, he shall not have the Emblements. *Co. 5. fo. 116.* See after in Leases.

*When Lessee
shall have
them.*

If the Lord cut down the Copyholder's Trees without his Leave, (or else a special Custom of the Manor to enable him to it) the Copyholder may have Case against the Lord for it. *Mich. 3 Jac. B. R. Cross and Abbot, and Trin. 17 Jac. by Justice Haughton*, and this notwithstanding he leave the Loppings of them.

*Lord cuts down
the Copyhold-
er's Trees.*

Also if the Lord cut down any Tree of his Tenant's that is to have the Lops, and take it away, Case lieth. *1 Brownl. 197, 231.*

*Cuts down his
Tenant's Trees.*

*The Lord doth
not leave Fire-
Wood.*

If the Lord cut down all the Copyholder's Trees, and not leave him Fire-Wood, &c. Tenant may have Case against him. *Brownl. ibidem 141, 197, 208.*

2 Brownl 57, 331.

If

If one take away my Pales, it seems I may have Case or Trespas at my Choice. 15 *Ed.* 4. 4.

For taking away my Pales.

And if one take my Pidgeons with Engines, I may have Case. 16 *Ed.* 4. 7.

If one have a Beast that died of the Murrain, and he throw out the Intraills, or Offal of it into my Ground, whereby my Beasts are infected by it and die, I may have Case against him. *Style's Rep.* 50.

Beast dies of the Murrain, &c.

If one be Time out of Mind to repair a Hedge between my Close and his, and he let it be unrepaired, that my Cattel go into his or other Mens Grounds, or other Mens Cattel go into my Ground, by Reason of which I have Damage, I may have Action of the Case for it. 2 *Cro.* 669. 20 *Jac.* B. R. See 1 *Ventr.* 264, 274, 275,

For not repairing of a Hedge.

If one ought to repair a Bridge, by which I have a Way to my Manor, &c. and he do it not, I may have Case. 11 *H.* 4. 82. 45 *Ed.* 3. 17. *Aff.* &c. 36, 37. See after.

For not repairing of a Bridge.

So if one be to repair or scour a Ditch, and do it not, by which my Land is drown'd, or I have any special Damage, Case lieth against him. F. N. B. 93. G. 11 *H.* 4. 28. *Action, &c.* 30, 34, 36.

For not scouring a Ditch.

If one be to repair a Wall or Bank of a River, and do it not, or doth it not sufficiently, whereby my Land is surrounded, I may have an Action *sur le Case.* M But

For not repairing the Bank of a River.

Damages.

But in these Cases, and such like, I must averr some special Damage to me, by the not doing thereof. *Trin.* 20 *Jac.* B. R. 2 *Bull.* 280.

For not repairing the Sea-Bank.

Also an Action of the Case will lie for me against him which ought to repair a Mound or Bank of the Sea, or of any great River, and doth it not, by which my Land is drown'd: So of the Bank of a River. *N. B.* 93. *G.* 29 *Ed.* 3. 32. 12 *H.* 4. 7. 15 *Ed.* 4. 18. 45 *Ed.* 3. 17.

Breach happens by Accident.

Note, But if the Breach and Inundation be by any extraordinary Accident, as by a Tempest or the like, no Action lieth. 10 *Co.* 139. 29 *Ed.* 3. 32. *Pl.* 49.

For not repairing the Highway.

If the Highway be to be repaired by any special Person, and is not, and I have any special Damage thereby, I may have Case for it. 5 *Ed.* 4. 3.

For not repairing a private Way.

If there be a Charge upon any Man by Reason of the Tenure of his House or Land, to repair any private Way, Bridge, Gutter, or the like, and he doth it not, and thereby I have any special Damage, Action lieth against him. *Old Book of Entries*, fo. 10.

For not repairing a House.

So I may have an Action on the Case against one for not repairing of a House ready to fall on my House. 22 *H.* 7. 98. *Pl.* 4.

One that hath a Room over me annoys my Room.

If one have a Room over me in a City or other Place, and so carry himself in it as to annoy me that am under him; as if he have a Shop or Warehouse over

over me, and I have a Cellar under it, and helay such an extraordinary Weight of Goods, more than usually have been, and so break it down upon me, I may have Cafe against him for it. *Popb.* 48.

If I have a Building beneath, and another Man a Building above me, and I suffer mine to decay so as to hazard his, or he suffer his to decay, so as to hazard mine, each of us may have an Action on the Cafe against the other. *Old Book of Entries*, fol. 3. *Keilw.* 48. But see *1 Brownl.* 4. 22 *H.* 7. 98.

If a Man doth overbuild my House, so that his House-Eaves do drop upon my House, and cause it to perish, or trouble my Dwelling, I may have an Action on the Cafe against him. 22 *H.* 6. 14. *Brownl.* and *Goldsb.* 4.

If a Man set up a House upon a new Foundation so near to my ancient House, that thereby he stops up my Windows, and takes away my Light, the Air and Prospect, I may have an Action on the Cafe. For a Man may not in *London*, or elsewhere, enlarge his House in Breadth or Length to stop his Neighbour's Light; but upon an ancient Foundation he may build it as high as he will; for, *Cujus est solum, ejus est usque ad Cælum*. See *New Books of Entries*, fo. 19. 5 *Co.* 10. 9 *Co.* 55, 56.

But otherwise, if a Man shall by Building, or by the setting up of a Woodpile, or the like, disturb me in the Light

M 2

I

He that hath a Building above suffers it to decay, to the Hazard of mine.

For Overbuilding my House, &c.

For stopping up my Windows by a Building upon a new Foundation.

I have to my ancient House, I may have an Action on the Case against him. *Hill. 9 Jac. B. R. Hughs's Case. Mich. 9 Jac. B. R. Ward and Chestner's Case. 7 Ed. 3. 26. AEt. 11. 22 H. 6 15.*

'Tis no Nufance to stop a Prospect, so the Light be not darkned. *Mod. Rep 55. See Vent 237, 293. 3 Keb 133. Popb. 170. 1 Sid. 167. Raym. 87. Hob. 131.*

When a Wrong may be purged. If one House be built hanging over another wrongfully, and after they come both into one Hand, the Wrong is now purged; so that if after they come into several Hands, neither Party is to complain of the Wrong done before. *Hob. 173.*

Building a Wall to stop up my ancient Light. If a Man shall build or set up a Wall against the Window or Light of my House I may have an Action against him, albeit he build upon his own Ground. So if he set up a Wood-pile upon his own Ground to stop my Lights, I may have an Action. *9 Co. 54. 5 Co. 108. But if it prevent my Prospect only, no Action will lie for this. Co. 8. 57.*

Note, 30 or 40 Years is no Prescription. But if two Men be Owners of two Parcels of Land adjoining, and one of them build a House on his Land, and make Windows and Lights looking into the other's Lands, and this continueth thirty or forty Years, the other may build or lay any Thing upon his own Land, and stop them. *1 Cro. 118, 129. 1 Bullf. 116. Yelv. 210, 215, 225.*

Note,

Note, For erecting a Dye-house.

The erecting of a Dye-house, Tan-house, Pigsty, House of Office, Brew-house, or Chimney, or of a Chandler or Butcher's Shop, or Lime-kiln, may be a Nuisance to a Neighbourhood, by which if I have any considerable Offence in the Smell, to my Health, or by the Smoke to our Bodies that live in the House, or Trees of the Garden or Yard, I may have an Action of the Case for my Relief. *Pasch. 5 Jac. B. R.* but in these Cases the Thing erected must be used.

So if one set up a Pigsty under my Setting up a House, and keeps Pigs in it, or a House Pigsty, &c. of Office, Lime-kiln, or Brew-house, and use it so near to my House, that the Smell thereof doth annoy me, and hazard my Health, &c. I may have an Action. *5 Co. 73, 101, 108. 9 Co. 54.*

So the Building of a Brew-house, or the keeping of a Chandler's or Butcher's Shop so near my House, in a Place inconvenient, to the Offence of me in my Garden or House, may be such a Nuisance, for which I may have an Action. *New Book of Entries, fol. 18. Trin. 13 Car. 1. B. R.*

Note, But if such a Man shall set up his Trade by me, though this be offensive to me, by the laying of stinking Heaps at the Door, and the like, I can have no Action for this, unless it be very great and much offensive. *1 Cro. 367. 13 H. 7. 26. Mich. 8 Jac.* yet this is indictable.

Concerning melting of stinking Tallow, and stinking Grease. 2 *Rol. Abr.* 140. *Palm.* 536, 538. *Cro. Car.* 510

Concerning erecting a Melting-house in a Close whereby the Plaintiff's Grass and Cartel were destroyed. *Rol. Abridg.* 140, 141. *Hut.* 136. *Palm.* 536.

Against a Brew-house maliciously erected, whereby a Neighbour's House is rendered uninhabitable. *Palm.* 536, 537.

Note, Where an Officer does any Thing against (or refuses to do) the Duty of his Place, whereby Damage accrues to the Party, Action lies, 2 *Vent.* 26. But it lies not against a Lord of a Manor for refusing to admit a Copyholder. *Ibid.* 27.

For many other Matters relating to Landlord and Tenant, see after Chap. 19.

C H A P. XVIII.

Of Words spoken of Tradesmen.

HAVING before treated of the Advantage and Disadvantage, which may lawfully happen to Tradesmen, &c. from buying and selling, and other Promises, Contracts and Agreements by Word of Mouth; or put in Writing according to the Statutes. I shall next shew the Advantage and Disadvantage, which may happen to a Tradesman, by Words of Mouth of another Nature, which also are much taken Notice of in

in the Law; I mean scandalous Words, that have Reference to Men in their way of Trade, and Dealing, purposely spoken to abuse and prejudice them.

And these may be spoken after three Manners or Ways.

1. When any Thing that shall be said of them to disparage their Credit, as to their Estate; as to call them Bankrupts, or the like.
2. Words spoken against their Honesty and Justice in their Trading; as to say they cheat, either in Things, Weight or Measure in their Buying or Selling.
3. When any Thing shall be said to disparage their Skill in their Trade.

These three are the Generals, though it may happen in some other Particulars; but wherein soever it is that a Man is damnified by such Talk, he must have his Remedy by an Action on the Case for Slander.

First, It is agreed that this Action will lie.

1. Concerning Words spoken to disparage the Estate of a Man; as to say of a Merchant, Mercer, Grocer, Shoemaker, Dyer, Weaver, or a Seller of Wool by Retail, or a Grasier, or one that doth trade for Lead in any County, and gets a Living by it; that he is a Bankrupt.

Words spoken to disparage the Estate of a Man.

M 4

Note,

Bankrupt.

Note, Bankrupt is one that having in a way of Trade gotten other Men's Goods, &c. into his Hands, is broken, or about to abscond himself, with Intention to defraud his Creditors, &c. *Vid. Stat. 1 Jac. ca. 15.* See what makes a Man a Trader, so as to make him a Bankrupt. *1 Vent. 29. 166.* And see the late Statute against Bankrupts.

And so of any other Tradesman that liveth by Buying and Selling at present, or did so very lately, and doth so usually, to say of him, that he is a Bankrupt; it is held this Action will lie. *Noy's Rep. 158. Hut. 49. 1 Bulst. 267. 4 Co. 19. Cro. 268. Style's Rep. 75.*

And yet it is said by some that where the Words have Relation to something else besides a Man's Trade, as to call him a Bankrupt Knave, or Bankrupt Rogue, or to say he is a Bankruptly Knave; that the Action will not lie, or is doubtful. *Style's Rep. 420. Hut. Rep. 13, 14. 2 Cro. 345, 578. Vid. 3 Cro. 171. 1 Lev. 90.*

But this should be otherwise by the most Authorities, and by Reason also; and it was held to lie for saying,

He is a Bankrupt Knave. *2 Bulst. 210. Dyer 72. 1 Cro. 911. 1 Bulst. 110. Cro. Eliz. 911. Cro. Jac. 578. 1 Rol. Rep. 22.*

So for saying he is a Bankrupt Rogue. *Godb. Rep. 152. Hutt. 52. Cro. Car. 31. Hern's Pleader 158. 2 Rol. Rep. 92.*

Or

*Bankrupt
Knave.**Bankrupt
Rogue.*

Or he is a Bankrupt Slave, or a Bankrupt Bankrupt Scrub. *Cro.* 2, 58, 345. *Hutt.* 13, 14. *Popb.* 184. *Style's Rep.* 75.

And though 'tis doubted whether Bankruptly the Action will hold for calling a Knave, &c. Man Bankruptly Knave, &c. (Yet 'twas said to lie for saying he will be a Bankrupt within two Days. *Dyer* 72.) yet *Vide Godb.* 151. For 'tis said there were other Words besides Bankruptly Knave, as above-mentioned. Yet *Cro. Fac.* 345, and 1 *Sid.* 103. Also 4 *Cro.* 19. says it does not lie, for that the Words are no more than, Thou art a Bankrupt-like Knave; as for Adjective Words, as he is a base beggarly Bankrupt Knave, 'twas held the Action lies, and was all one as if he had said, He is a base beggarly Knave, and a Bankrupt. *Mich.* 10 *Car.* B. R. *int. Style* and *Finch*, adjudged *per Cur.*

Adjective
Words.

And the Words Bankrupt Knave, if by themselves, are held both as Substantives.

And if Adjective Words presume an Act done, or scandalize a Man in his Office, Profession, or Trade, an Action will lie for them. 4 *Co.* 19. as perjured Knave, thieving Rogue, perjured Thief *Ibm.* and *Style* 6. *Cro. Fac.* 66. 2 *Rulst.* 138. 1 *Sid.* 373. *Cro. Fac.* 514. Thou art a thievish Knave, held not actionable. 4 *Co.* 19. but *Vide Latch* 47. Thou art a thievish Pirate, actionable,

actionable, Thou art a conjuring Knave, not actionable. 2 *Bul.* 138.

Thou art a traitorly Knave, held actionable. 1 *Sid.* 103. adjudged and affirmed in Error. 1 *Keb.* 439. 1 *Lev.* 90. So, Thou art a rebellious and traitorous Knave; actionable, *per Cro. Eliz.* 171.

Thou has dealt traitorously with J. S. not actionable. *Yebu.* 72. *Cro. Jac.* 81.

Of a Merchant in Partnership, He is a base cheating Knave, and hath cheated J. S. (*innuendo* his Partner) and I will prove it, for he received in Partnership 20 *l.* and gave him an Account but of 5 *l.* actionable; adjudged *Trin.* 15 *Car. B. R. int. Arundel & Masj. Style* 388. *Cro. Car.* 552. yet not there fully reported.

*Interrogatory
Words.*

Concerning Interrogatory Words, as for these, What art thou? A Bankrupt, and wast a Bankrupt; actionable, for the Answer is a plain Affirmative. *Cro. Eliz.* 273. Where is that Bankrupt Knave? Where has that Pillory Knave been? said of a Merchant, actionable. *Cro. Eliz.* 26. adjudged.

Pewterer.

One said of a Pewterer, He is gone, and does hide himself for Debt, and for ought I know, is a Bankrupt, held actionable, *Style* 142.

One

One said of a Lime-burner, He is *Lime-burner*. a Runaway, and base cheating Rogue, and he shall never think to bring *J.* S. where he is himself, and rather than so, I will spend 20 *l.* in this Action, The Court was divided.

One said of a Scrivener that used to *Scrivener*. receive Money, &c. He is a broken Runaway, and dares not shew his Face; and held actionable at the Common Law, because the Words disgraced him in the Trade of a Scrivener. *Mich. 13 Car. B. R. ini. Best & Loit. Hut. 125.*

One said of an Inn-keeper, Go not to his Inn, for he is so poor you can have no good Entertainment; held actionable. *Hut. 125.*

If one calls a Merchant that has *Merchant*. left off his Trade, *Bankrupt*, 'tis actionable, for he may use the Trade again at his Pleasure; adjudged *Trin. 39 Eliz. B. R. int. Gardner & Hopwood.*

One upon Discourse said, You had best to call your Debt in from *J. S.* and to take heed how you trust him; not actionable, being only good Counsel. *Cro. Eliz. 541. int. Vanspice & Clayton. Vide Style's Rep. 142.*

Of a Merchant, That he is a Bankrupt, actionable. *1 Leon. 326. 1 Rol. Abr. 47. Pl. 2. 61. Pl. 18. Otherwise if no Merchant. 1 Rol. Abr. 44. Pl. 6. that is of no Trade, not used to buy and sell.*

Of

Grasier.

Of a Grasier, actionable. 1 *Bul.* 40. adjudged.

Farmer.

Of a Farmer, not actionable; otherwise if special Damage laid. *Styke* 126. See after,

Butcher.

Of a Butcher and Grazier. *Hern's Pleader.* 109.

Merchant.

To *J. S.* of a Merchant, Buy no more Wooll for him, he will never pay for it, he is not worth a Penny; actionable. *Intr. Pas.* 12 *Car.* 424. 1 *Roll. Abr.* 61. *Pl.* 20.

Mercer.

To a Mercer, Thou art a Cuckold, and a cuckoldy Rascal, thou dost owe more than thou art worth, and thou art not able to pay all thy Debts; held actionable, alledging special Damage; adjudged *Pas.* 1650. *inter Vicary & Barons. Sty. Rep.* 213, 217. 1 *Roll. Abr.* 61. *Pl.* 21. *Vide Hern's Pleader,* 108. Such an Allegation, the Words being there, He is broke, his Shop-windows are shut up.

Carpenter.

One said of a Carpenter, He is broken and run away, and will never return again; and upon a special Declaration upon a Discourse of him and his Trade, 'twas doubted whether the Words were actionable, because a Carpenter builds upon the Credit of other Men, and the Words touch him not, in the Skill and Knowledge of his Profession. *Hill.* 3 *Jac.* 2. *int Chapman & Lambire.* 3 *Mod.* 155. *Dubitatur*, and the Chief Justices seem'd to incline for the Plaintiff. And

And so for saying, He is a Bankruptly Knave, and cannot be trusted in London for a Groat. *Godb. Rep.* 151.

So for this of a Merchant, He is *Merchant not* not worth a Groat, he is a 100 Pounds *worth a Groat.* worse than nought. 1 *Cro.* 193, 231. 2 *Cro.* 578. *Cro. Car.* 265. 2 *Bullst.* 267. *Hutt.* 125.

Yet this hath been thought other-wise, for a Man's Credit may be good though he is worth nothing. 15 *Car.* *B. R.* *Axe* and *Moon's Case.* 1 *Roll.* *Abr.* 86. *Pl.* 3. *Raym.* 184.

One said of a Fuller, Trust him not, *Fuller.* for he owes me 100 *l.* and is not worth a Groat; held actionable. *Hutt.* 124.

One said of a Widow Maltster, She is a broken beggarly Jade, and she is not worth a Groat, nor the Cloaths she wears on her Back, &c. whereupon her Landlady demanded her Rent, and also thereby she lost her Customers. *Hans. Ent.* 11, 12.

One said of a Merchant, He is a *Merchant.* beggarly Fellow, and not worth a Groat, and not able to pay his Debts, and rides abroad with his Men double arm'd, for Fear of Bailiffs; held actionable. *Mich.* 21 *Car.* 2. *int.* *Drake & Hill.* *Raym.* 184. adjudged.

One said of a Merchant, I believe *Merchant.* all is not well with him, there are many Merchants that have lately fail'd, and I expect no otherwise of him; held

held actionable, *int. Vivian & Willett, Raym. 207.*

I shall prove thee a Bankrupt.

So for this, I will prove thee a Bankrupt, or I shall prove thee a Bankrupt within such a Time. *1 Cro. 193.*

Has been a Bankrupt, &c.

So for this, I will prove that he hath been a Bankrupt, and hath agreed with his Creditors for a Noble in the Pound, and I will prove it. *Hill 3 Jac. B. R. Edmond's Case.*

Not able to pay thy Debts.

So for this, Thou dost owe more than thou art worth, and art not able to pay thy Debts. *Style's Rep. 213.*

Will run the Country.

So for this, He is a Bankrupt, and not able to pay his Debts, but will run the Country. *Hutt. 46.* Or he is a Bankrupt, and I will drive him out of the Country.

He fled beyond Sea for Money.

So for this, He is a Bankrupt and fled beyond the Sea for Money. *Trin. 9 Jac. B. R. Trulock's Case.*

Merchant.

Of a Merchant, He is fled and gone, and I shall lose my Money; so, He is a beggarly Fellow not worth a Groat, nor able to pay his Debts. *1 Lev. 276.*

Dares not shew himself for Debt.

So for this, He is gone and dares not shew himself for Debt, and he is a Bankrupt for ought that I know. *Style's Rep. 130.*

Merchant, he is broken.

So for this, What art thou? A Bankrupt, and wast a Bankrupt. *1 Cro. 213.* So for this said of a Merchant, or the like, He is broken. *Hill. 17 Jac. B. R. Johnson's Case.* Or, He came a broken Merchant from Dale. *Vide postea.*

So

So for this, He is a poor Fellow, and not able to pay his Debts. *Style's Rep.* 273. *He is a poor Fellow, &c.*

Note, But it will not lie for saying, He was a poor Man within this seven Years. *Cro. 1. 123.* For he may be sufficient and rich at the Time of the Words spoken notwithstanding his former Poverty.

So for this, Thou art a base beggarly Rogue, and not able to pay thy Debts. *Style Rep. 217.* an Action lies, *Base beggarly Rogue, &c.*

'Twas said of one that used to buy and sell Goods and Merchandize, &c. He is a broken Bankrupt, and a declined Man, and not able to pay his Debts, and therefore he is run his Country; held actionable, tho' he does not alledge that he used any certain Trade, because notwithstanding he is within the Statute of Bankrupts; adjudged 16 *Car. int. Boyer & Shale. Vid. 2 Bul 267. & vide Lat. 114. Godb. 40. 3 Mod. 112.*

One said of a Tradesman, He is a base beggarly Fellow, and had it not been for my Help, he had not had a Bit of Bread to put in his Head, and I have exactly cast up his Estate, he is not able to pay above 2 s. 6 d. in the Pound to his Creditors, of their Debts; actionable without averring any particular Damage; adjudged *Pas. 1651. int. Smith & Rookes. Vid. Style 273.* the Words there being, Thou art a poor Fellow, and not able to pay 2 s. in the Pound,

Pound, and art not able to pay thy Debts. 1 *Rol. Abr. fo. 61. Pl. 12.*

So for this, of a Grocer, He is a beggarly Fellow, and not able to pay his Debts. 1 *Cro. 339, 643. 1 Rol. Abr. 61. Pl. 13. 86. Pl. 2.*

Grocer.

So of a Merchant, Thou art a Rogue and a beggarly Fellow, and I shall prove thee a Bankrupt before the next Term. *Cro. Car. 336. inter Faxon and Tanner. Style's Rep. 142.*

Merchant.

So to say of such a one as doth merchandize, and get his Living by Lead in any County, He is a Bankrupt and beggarly Gentleman. *Hutt. 40. 1 Bulst. 41.*

One Merchandizing in Lead.

So for this, of a Farmer in the County try that doth buy and sell, and get his Living by it; You are a Beggar and bankruptly Fellow, and if every one had his own, you are not worth a Groat; but here 'tis best to shew he had some particular Loss. 3 *Mod. 112. Style 126.* as that his Landlord thereupon gave him Warning to leave his Farm. *Style 496.*

A Farmer.

So to say of a Millener in London, Thou art in a breaking and decay'd Condition, and I will prove it; and if you question me, I will prove it to your Disgrace. *Style's Rep 425. Mich. 1654. int. Waltendon and Hagcock.*

Millener.

So to say of a Corn-Master and Baker in London, Thou art a broken Fellow, and hast cheated me of two hundred Pounds. *Style 429.*

Corn Master or Baker.

So

So for this said of a Vintner about *Vintner, he is*
to have a Trial at *Guildball*, He is bro-
ken (meaning he is not able to pay for
the Wares he bought) and I warrant
you he dare not be at the Trial at
Guildball. 2 *Cro.* 562. 2 *Rob. Rep.* 144.
Palm. 63

And yet it's said it will not lie for
this, He is a broken Rascal, and hath
broken twice, and I will make him break
the third time.

Quer. But to say, He will break the
third Time, may be more dangerous.
Benl. 170. *Noy's Rep.* 77. *Hill's Case*,
Latch 114. *Dubitatur.* *New Dyer in*
Margine, 72. *b. vide 3 Mod. Rep.* 155.

Nor for saying of an Attorney, Far-
mer, or other Man that is no Merchant
or other Tradesman that lives by buy-
ing and selling, He is a Bankrupt. *Hutt.*
13, 14. 1 *Bullf.* 40. 2 *Cro.* 424. *Goldsb.*
84. *March* 8. but see before.

Nor for this said of a Merchant, Doth
he owe you Money? Get it quickly, and
take heed how you trust him. 1 *Cro.* 541.
Trin. 36 *Eliz. Vaspick's Case.*

Neither will this Action lie to say of
a Merchant's Apprentice (and he doth
merchandise for another Man) that he
is a Bankrupt.

Nor if one hath been a Merchant,
and hath given it over, and a Man call
him Bankrupt.

Quer. Yet it's said if he resume his
Trade again and then be called so, it
will

He hath bro-
ken twice, &c.

Bankrupt spe-
ken of an Attor-
ney, &c.

Take heed how
you trust him,
&c.

Merchant's
Apprentice.

A Merchant.
Giving over
his Trade.

N

will lie. 1 *Bullst.* 267. *Noy's Rep.* 33. see before.

*Of a Merchant
trust him not,
&c.*

Nor will it lie for this said of Merchant or Tradesman, Trust him not, for he will be thy undoing, or, He is a beggarly Fellow. 1 *Cro.* 1. 171.

*I will sue out a
Commission,
&c.*

Nor for this, I will sue out a Commission of Bankrupt against J. S. But note, If one procure a Commission of Bankrupt to be sued out against me of Malice, and without good Cause, and I have any special Damage thereby, I may have an Action *Style's Rep.* 3.

*Calling a Tay-
lor, &c. Bank-
rupt.*

Nor for this, of a Wool-winder, Taylor, or Fuller, He is a Bankrupt. *Popb.* 185.

*Shoemaker
Bankrupt.*

And yet 'tis said to say of a Shoemaker, He is a Bankrupt, the Action will lie. 1 *Cro.* 208. But he did set forth that he was a Shoemaker, and did use buying and selling of Leather. And if a Man have any special Damage by such Words, and avers it in his Declaration, 'tis thought he may maintain the Action. *March. Rep.* 96. 1 *Browl.* 10, 13. 2 *Brownl.* 100, 129. 1 *Bro.* 100.

*Special Da-
mage averrid.*

2^{dly} Concerning Words spoken to disparage a Man's Honesty.

*He doth buy
and sell by
false Weights,
&c.*

As to say of a Merchant, Mercer, Grocer, or such like Tradesman, that he doth buy and sell by false Weights and Measures, or by false Weights or Measures; this Action will lie. *Hob.* 93. *March* 119, 197. 15 *Car.* 1. C. B. *Pal.* 17 *Car.* 1. *Pain's Case.* But to charge a

another Man so, that is a Tradesman, is not held actionable.

Nor to say of a Tradesman, that he keeps false Weights and Measures in his House; for perhaps he may neither use them nor know of them. *March Rep. Pl. 197. Hill. 6 Eliz.*

C. B.

Words spoken of a Carrier, He That Carrier has made false Letters, he has cou-^{made false}zen'd my Husband of 11 l. and gave Letters. me a false and forged Acquittance; not actionable, without a Discourse of his being a Carrier. *1 Lev. 112.*

But it will be actionable to say of a Man that he keeps false Weights and Measures by which he doth couzen the Country.

So for this, Thou dost keep and sell by false Weights, and in Four and twenty Shillings bestowing thy Weights were false two Ounces, and I will prove it. *Brownl. 1 Part, 4. 5.*

So it will lie also for saying of a Farmer that doth use to sow his Land and sell the Corn, and by this to maintain his Family; He keeps a false Bushel by which he doth couzen and cheat the Poor. *Pass. 17 Car. 1. C. B. March Rep. Pl. 192.* But the Plaintiff further saith, that by these Words he lost his Custom.

For saying of a Merchant, He is a cheating Knave, and hath cheated his Father by returning twenty Pounds for

N 2

for Wares, &c. the Action lies. *Style's Rep.* 123. 1 *Cro.* 398.

*Goldsmith a
couzening
Knave.*

So for saying of a Goldsmith, and one that gets his Living by buying and selling of Chains, Jewels, &c. Thou art a couzening Knave, for thou hast sold me a Sapphire for a Diamond. 3 *Cro.* 171. So for this, Thou art a couzening Knave, and foldest me a Chain of Copper for Gold. *Hill.* 32 *Eliz.* B. R. *Peek's Case cited.* 13 *Jac.* B. *Vide* 1 *Rol. Abr.* 62. Pl. 27. *Cro. Eliz.* 171.

*Taylor a cou-
zening Knave,
in Gold, &c.*

But it will not lie for saying these Words of a Taylor, &c. He is a couzening Knave, for he hath sold me a Chain for Gold that is but Copper, and he is a couzening Knave upon Record, and hath been imprison'd for couzening. 2 *March. Sland.* 2 *Cro. Eliz.* 171. and this may be because 'tis not properly his Trade.

Woad-seller.

Of a Woad-seller by one had been his Servant, He did use to make me when I dwelt with him, to take black Mould out of Hillocks, and to mix it among the Woad, and after sold it for Woad; held actionable. *Pasch* 14. *Car. B. R. int. Fesson & Hays.* 1 *Rol. Abr.* 63. Pl. 31. *Old. Entr.* 52.

*of a Wool-
dresser.*

Thou openedst my Pack, and didst put in wet Wool; actionable. *New Dyer.* 72. b. in *Marg.*

So of a Silk-Dyer, He put Pin-Duft *Silk Dyer.*
in his Fat. *ibid.*

So of a Fuller, He stops Holes made *Fuller.*
in Fulling, with Flocks. *Ibm.* 1 *Leo.*
115.

So of a Surveyor and Measurer of *Surveyor.*
Land, Thou art a couzening and a
shifting Knave; for these Words trouch
him in his Means of Living, being
spoken in Discourse about Measuring
Land. *Cro. Jac.* 504. 2. *Rel. Rep.* 72

But it was held actionable for saying *Taylor*
of a Taylor and Freeman of a City, He *disser* in his
hath cheated in his Trade. *Jealand's Trade.*
Case Trim. 15 *Car.* 1. *B. R. Heth.* 123.

And it hath been said that these words *Wheelwrights a*
spoke of a Wheelwright, Thou art a Co-*Cozenner, &c.*
zenner and hast cozened me of a pair
of Wheels; are not actionable. *Heth.* 123.

One said of a Weaver in *French* to *Weaver.*
this purpose, He is a Rogue and a
Villain, and he taketh the Goods of
his Customers and pawneth them, and
he is not a Man to be trusted; acti-
onable, adjudged *Hill.* 1650. *int. La-*
porte & Cooke. intr. Hill. 1649. *Ra.*
1459.

One said of a Leatherfeller upon *Leatherfeller.*
Discourse, He hath cozened you, and
hath sold you Lamb-Skins instead of
Shamey-Skins, do not you go to him
for he will cozen you; and held acti-
onable, adjudged *int. Fairbank & Mal-*
sou. 10. *Car B. R.* 1 *Rel. Abr.* 63. *Pl.*
30.

*Merchant en-
vening Knave.*

Nor these of a Merchant, He is a co-
zening Knave. *March Rep.* 8, 9. Yet it
is questionable if they be spoke with re-
spect to his Trade. *Pasc.* 15 *Car. B. R.*

*Thou art a
Cheater, &c.*

Nor for this, Thou art a Cheater, and
hast cheated my Husband of five hundred
Pounds; because the Words do not refer
to his Trade. 1 *Cro.* 301. 1 *Brownl.* 4, 16.

*Merchant
keeps a false
Debt-Book.*

Nor for this of a Merchant, He keeps
a false Debt-Book. 1 *Cro.* 403. *Winch
Rep.* 40. *Moor* 409. *Pl.* 553. But to say
of him, He deceives Men by buying and
selling, may be actionable; So if there
was any Discourse concerning his Trade.
2 *Saund.* 307. *Hard. Rep.* 18. 1 *Ven.* 117.
but upon a Colloquium of his Trade, it
will lie.

One said upon a Colloquium of the
Plaintiff's Trade, He is a cheating
Knave, and keeps a false Debt Book,
with which he cheats the Country; and
held actionable. 1 *Vent.* 263. *Vide Hern's
Pleader* 112. Of a Woman Woollen-
draper, She keeps a false Shop book,
and the Country do complain against
her, for taking her Debts two Times
over; and see. *Rob. Ent* 46.

*Trust him not,
&c.*

Nor for this of a Merchant, Trust
him not, he will be thy undoing. 1 *Cro.*
171.

Couzener.

Nor for this, He is a Couzener. 2
Cro. 204.

Varlet.

Nor for this, He is a very Varlet, and
seeks to suppress his Brother's Will: He
makes

makes a Shew of Religion, he is a very Hypocrite. *Poph.* 148.

Hypocrite.

Nor for this said of a Mercer or any Tradesman, He hath deceived me in a Reckoning for Wares, and his Debt-book which he keepeth in his Shop is a false Book, and I will make him ashamed of his Calling. *1 Brownl.* 4. *Godb.* 242. but see *1 Vent.* 117. but *per Popbam.* If he had said, Deal not with him, he keepeth, &c. an Action would have lain. *Palm.* 65. cited accordingly.

One said of a Smith, Thou art a Smith, Rogue, and a couzening Rogue, and in one Tire of Wheels sent G. B. thou didst couzen him a Noble, and that I will prove; not actionable, because it may be intended that he couzen'd him in the Price, which is no Slander to his Trade, for he does not say he made false Ware. *Pas.* 16 *Jac.* *B. int. Digner & Snelling.* *1 Ven.* 263. *1 Rob. Abr.* 62. *Pl.* 24. *1 Rob. Abr.* 55. *Pl.* 24. 'Tis *int. Ticknell & Snelling.*

Of a Woollen-draper, You are a cheating Fellow, and keep a false Book; Action lies. See *2 Saund.* 307. *1 Cro.* 403. also *1 Vent.* 263.

Woollen Draper.

Nor for saying of any Tradesman in *Thou art a London*, Thou art a Cheater, and hast cheated *A. B.* of 500 *l.* *1 Brownl.* 4. 16.

Note, Unless it be spoken of, and applied to a Cheating in his Trade. *1 Cro.* 101.

Brasier.

As to say of a Brasier, Thou hast couzened me in a Pan. *Stytle's Rep.* 364. And so consequently by the same Reason it will lie against any Man that shall charge any other Tradesman with couzening another in his Trade.

General Rule.

Inn-keeper is a Couzenner, &c.
So it will lie for saying of an Inn-keeper; No Man cometh to his House, but he couzeneth him. *Hetl.* 123.

One said of an Inn-keeper, He is a Carterpillar, for he lives by Robbing of his Guests; not actionable, for 'tis as much as if he had said, He liv'd by Powlng and Pilling, which is incident to his Trade. *Moor* 179. *Pl.* 319. adjudged.

One said of an Inn-keeper, That he harbour'd Cutpurfes and Rogues, and receiv'd stol'n Goods, &c. not actionable. 2 *Rol. Rep.* 136. *Clark's Case.*

One said to a Man that kept a Livery-Stable, Thou buyest nothing but stinking rotten Hay, and poisons Men's Horses; and held not actionable, because he is no Inn-keeper, and so it is not any Trade allow'd in Law. *Pas.* 14 *Car.* B. R. *int.* *Jones & Joice.* 1 *Rol. Rep.* fo. 60.

Baker.

To say of a Brewer, He maketh and selleth bad Beer, or of a Baker, he selleth naughty Bread; if the Party of whom it's so said hath any special Loss thereby; it is actionable. *Mich.* 15 *Car.* 1. B. R.

To

To say of a Brewer, My Mare doth Brew.

piss as good Beer as he doth brew; though these Words are insensible and impossible, yet if the Party shews any special Damage, 'tis said the Action will lie. *March* 60. 1 *Rol. Abr.* 59. 1.

Jones 444.

One said, Lee's Beer is unwholesome; and held actionable upon a special Declaration. *Inter Lee. & Steadwick. Mich.* 9 *Car. B. R.* 1 *Rol. Abr.* 62, 63. *Pl.* 28.

So for this, He brews naughty Beer, being spoken of a common Brewer. *March* 59. cited *per Rol.*

To speak of a Butler of the Temple such scandalous Words, by which he loses his Place, he may have an Action, declaring specially, &c. 1 *Sid.* 376.

If one is about to place his Son with me, and another say to him, Put not your Son to your Son to him, for he will starve him to death; 'tis said these Words are actionable. *Hetl.* 71. spoken of a Merchant, for it comes within the Compass of the Disgrace of his Trade.

So of one that used to board Children, You have starved Hospital Children, and you kept a Kinsman of your Wife's, and starved him to Death, &c. *Trin.* 1; *Car.* 1. B. R. 1 *Rol. Abr.* 63. *Pl.* 29.

So it is said that this Action will lie for any Servant that shall be by Words

*He will starve
your Son to
Death.*

*Words spoken
of a Servant.*

Words charged to couzen or deceive his Master; as if one should say *A.* doth defraud (couzen or cheat) his Master, and will undoe him.

Note, But the Servant must shew some special Los by it. 1 *March, Sland.* 99. 15 *Car.* 1. *B. R.*

Deputy-Register.

One said of a Deputy, Clerk to a Register, that receiv'd his Master's Money, and was to render an Account, He is a base couzening Knave, he is a Cheater, and hath couzened his Master; held actionable. *Cro. Car.* 563.

For a Servant and Journeyman that sold Stuffs, &c. for his Master, upon Words which tended to disgrace him in his Profession; actionable. 15 *Car. B. R. int. Phillips & Ellaker.*

One said to a Master Shoemaker, concerning his Journeyman and Foreman of his Shop, It is no matter who hath him, for I warrant whosoever hath him, he will cut him out of Doors; and held actionable in *London*, with a special Averment, that it signified he would undoe his Master. *Pas.* 15. *Car. B. R. int. Ellis & Hunt. March* 1, 2. Same Case adjudged, but there particular Damages were shewn, as ought to be. 1 *Roll. Abr.* 60. *Pl.* 8. 86. *Pl.* 4.

Words Spoken of a Bailiff.

So if a Man hath a Bailiff on his Farm that doth buy and sell his Corn, and hath his Livelihood thereby, and any

any one doth charge him with any Deceit therein, whilst he is in his Office and Imployment, he may have an Action; but not if it be after. *March Rep.* 190, 197. *Hob.* 9. *Winch* 40.

So for these Words, You are a couzening Knave, and you did couzen your Master of a Bushel of Barley; held actionable. *Int. Sam & Bigg. Cro. Car.* 480. 1 *Jones* 395. being spoken of a Servant and Bailiff.

Thou art a couzening Knave, for thou hast couzened me in false Measure in my Barley, the Country is bound to curse thee for selling false Measure in my Barley; held not actionable. *Contra. Winch* 40. *March* 116. *Hob.* 76. *Vid.* 1 *Brownl.* 4.

These Words of a Malster were held actionable, without a *Colloquium* of his Trade, viz. He has cheated all the Farmers at E. &c. 2 *Lev.* 62. because it appeared to be meant of his Trade.

And yet 'tis said to be adjudged not to lie for these Words spoken of a Butcher's Wife, who sells Meat in her Husband's Absence, She is a couzening Woman, and hath couzened one of her Neighbour's of 4 l. and I will prove it. *Hutt.* 14. See 1 *Vent.* 348. 1 *Roll. Abr.* 62. *Pl.* 26.

For speaking scandalous Words of the Wife of a Stage-Wife of one who kept a Stage-Coach, whereby he alledged he was rendred so
ridi-
culous.

Malster.

A Butcher's Wife.

ridiculous that no Body would ride in his Coach. *Sed non allocatur.*

One said of a Shoemaker, He is a Cobler; and held actionable. 1 *Mod.* 19. cited *per Twissden.*

One said of a Miller that kept a Mill, that he had stoln three Pecks of Meal; held actionable. *Int. Langly & Bradshaw.* 1 *Rob. Abr.* 73. *Pl.* 16.

Shoemaker.

Miller.

3dly, Concerning Words spoken to disparage the Skill of a Tradesman, &c.

This Action will lie for saying of some Tradesmen that they have no Skill or Understanding in their Trades.

Taylor, &c.
hath no Skill
in his Trade.

As to say of a Taylor, Carpenter, the like Tradesman, He hath no Skill in his Trade.

Quær. Yet it is thought not to be actionable if they be spoke of a Tradesman, that may use his Trade by one that hath a Skill, as a Mercer.

To say of a Baker, He knoweth not how to bake, or of a Brewer, He cannot brew good Drink, is said to be actionable.

Baker and
Brewer.

Note, But it may not be actionable to say, He had no Skill within these few Years; for he may have enough at this Time. 1 *Gro.* 231.

One said of a Schoolmaster, Put not your Son to him, for he will come away as very a Dunce as ever he went; and held actionable. *Heth.* 71. *per Yelverton.*

Schoolmaster.

One

One said of the Deputy to *Clarencieux* King at Arms, He came and sat by Force of a forged Commission, and he is a Scrivener and no Herald; held actionable, for the Words touch him in his Office and Profession, whereby he got his Living. *Cro. Eliz.* 328, 329.

The Plaintiff declared that he was *Master of the Mint*, Master of the *Mint*, and that the Defendant said of him, He has not made Money as fine and good as the Standard by a half Penny in the Ounce, and so he had saved 4000 *l.* 1 *Leon.* 88. *Vide.*

For Words spoken of the Clerk of *Hall-Clerk*, *Merchant-Taylor's Hall*, which touched him in his Office and Credit, held actionable. *Cro. Eliz.* 358.

For Words spoken of an under *Postmaster*, Postmaster to carry about Post-Letters, of his breaking open Letters, and taking out Bills of Exchange, *per quod*, he lost his said Employment, said no Action lies, because it did not appear what Letters he had broken open, nor for what time he was retain'd, and that he is little more than a common Porter; and *Hale* said that if this Action should lie, one should not speak disparagingly of a Man's Cook or Groom, but presently an Action would be brought. *Mich.* 27 *Car.* 2. *int. Bell & Thatcher.* 1 *Vent.* 275. adjudged.

judged. But *Vide* 1 *Lev.* 115. an Action lies for scandalous Words spoke of any Man of any Trade or Profession, be it never so mean, if they are spoke with Reference to his Profession; by three Judges.

To say of a Physician in reference to his Profession, He is a Mountebank, a base Fellow, and an Empirick; is actionable.

Physician.

Hughes's Rep. 441. *Pasc.* 12 *Car. B. R.*

Watchmaker.

Words spoken of a Watchmaker, He is a Bungler, &c. and no *Colloquium* of his Trade, not encouraged, tho' after Verdict found that he was a Watchmaker. *Vid. Mod. Rep.* 19. *Dubitatur.*

He hath no Skill in Physick.

So for saying He hath no Learning nor Skill in Physick. 7 & 8 *Car. B. R.*

He is a Fool, and an Ass, &c.

So for this, He is a drunken Fellow, a Fool, and an Ass, and was never a Scholar, nor able to speak like a Scholar; or, He is no Scholar, and hath no Learning. These are said to be actionable, without referring the Words to his Office: But if the Words be spoken in Reference to his Office they are most unquestionably actionable. 1 *Cro.* 196. 197. *Godb.* 441. But see 2 *Cro.* 58. *Briscoe* vers. *Hollis.*

Of a Justice.

For saying of a Justice, He is a forsworn Justice, and not fit to be a Justice of Peace to sit upon the Bench, and so I will tell him to his Face; is actionable. *Vid. Mod. Rep.* 22, 23. 1 *Lev.* 280. But not actionable to say of a Justice, He is not worth a Groat, and is gone to the Dogs. 1 *Vent.* 258. To

To say of a Justice, He is a Fool, As, and beetle-headed Justice, is not actionable. *Vid. Lev. 52, 251.*

Concerning a Chirurgeon, if one say Go not to such a one for Chirurgery, for he hath no Skill in Chirurgery, 'tis actionable. *Heth. 70.*

One said of a Chirurgeon, and of one *Matthews* he lately had in Cure, Thou didst kill *Mr. Matthews*, thou didst kill him; and actionable.

Note, But if he had said for lack of Skill, then had the Case been more clear. *Heth. 69.*

Yet these Words are not thought actionable, He hath killed *A.* (now dead) with Physick, a Pill and a Vomit was found in his Mouth; and Doctor *A.* and Doctor *B.* found it so, and it is true. *Cro. 1. 620.* although it was averr'd the Doctors never found it so: These Words seem to be Nonsense, and impossible.

If one says of a Chirurgeon, He poisoned the Wound of *J. S.* for Gain, an Action will lie, for the Words scandalize him in his Profession. *Mich. 33 & 34 Elix. 2. And. 268.* adjudged, and the Court agreed it for a general Rule, That where one gets his Living by any Art or Science, if Words affect him him with any Falsity or wicked Dealing therein, they are actionable. *1 Rol. Abr. 71. Pl. 58.*

'Tis actionable to say of a Midwife Words spoken Many have perished for her want of Skill. *1 Cro. 153.* So

*He hath killed
A. with Phy-
sick, &c.*

Chirurgeon.

*Thou art a
Witch, &c.*

So for this, She is an ignorant Woman and of small Practice, and very unfortunate in her Way; there are few that she goes to but lie desperately ill, or die under her Hands. 1 *Vent.* 21. She is a Whore, and J. S. keeps her as a Whore; not actionable, being spoke of a Schoolmistress; for a Scandal in such a Profession, is not actionable without special Damage. *ibm.* But for this, Thou art a Witch and wert the Death of the Child of J. S. at whose Birth thou wert Midwife. *Trin.* 21 *Jac. B. R. Vide Noy.* 22. 1. *Brownl.* 2. *Hutl.* 13. *Godb.* 34. *Dubitatur.*

But to call one Witch without more Words, no Action will lie. *Cro. Jac.* 150. 1 *Sid.* 53. *Godb.* 181. *Cro. Jac.* 531. 1 *Roll. Abr.* 45. *Pl.* 15.

Yet if one says to another, Thou art a Witch, and didst bewitch me; held Actionable, *contra Mich.* 17 *Jac. Herri's Pleader* 112. same Point, but two Judges were *contra*, but by them said, If the Words had been added, and hast bewitched me that I am lame, it had been actionable. *Vid.* 1 *Brownl.* 14.

For saying thou art a Sorcerer and Inchanter; not actionable. *Noy* 22. 1 *Brownl.* 2. *Godb.* 341.

Neither for saying, She is a Sorcerer and a Witch, and can witch and unwitch, she is a white Witch, and can witch and unwitch; but see *Hut.* 13. but where the

the Words are coupled with a Fact done, as there reported, they are actionable, as for bewitching Milk or Drink. *Cro. Jac.* 600. *Cro. Car.* 141. 1 *Jen.* 325.

Thou liv'st by Charming, Sorcery and Witchcraft; not actionable. 2 *Leon.* 30. 2 *Brownl.* 276. but where the Words were, He hath bewitched my Wear, and I can take no Fish; not actionable. 2 *Brownl.* 276.

Thou art a Bawd, and hast bewitch'd me, lies for the last Words. *Cro. Car.* 261. 1 *Rol. Abr.* 44. *Pl.* 9.

She is a Witch, and was convicted at the Assizes, &c. actionable. 1 *Jones* 325. *Mich.* 9 *Car. B. R. int. Hill* and *Johnson.*

Where charg'd for bewitching Man or Beast, is actionable. 1 *Sid.* 53. *Cro. Car.* 474. 5. 480. 1 *Jones* 397. *Godb.* 231. *Style* 59. 2 *Rol. Rep.* 86.

To charge one to act by Necromancy or Communication with the Devil; actionable. *Hob. Rep.* 159, & 172. 3 *Bul.* 74. *Yelro.* 150. 3 *Inst.* 45. *Moor* 868. *Pl.* 1204. *Hob.* 119. 1 *Bro.* 8. *vide Alegn* 6. and *Style* 5.

C. did bewitch my good Man, and she is a Witch, and I will prove it; actionable. 1 *Rol. Abr.* 47. *Pl.* 31. See *Cro. Eliz.* 312. So, He is a Witch, and bewitch'd my Husband: He is a Witch, and deserves better to be hang'd than old *Arthur* who was hang'd for a Witch.

O

The Trades-Man's Lawyer, and

Witch. *Reym.* 35. So, S. is a Witch, and I know it, and if she cross me, I'll hang her for it. 1 *Sid.* 386. 1 *Lev.* 255. 1 *Sid.* 52. So, Thou art a Witch, and I'll make thee suffer for a Witch, &c.

3 *Lev.* 394, 395.

But an Action lies not for calling a Man a Whoremaster, or a Woman Whore, without any temporal Loss. *Cro. Jac.* 323. *Trim.* 11. *Jac.* B. R. So of Adulterer. *Moor* 29. *Pl.* 92. *Vide* 1 *Roll. Abr.* 158.

Where one said, Thou art a Whore, for J. S. hath the Use of thy Body, the Cart is too good for thee. *Cro. Eliz.* 582. but where by the Custom of London an Action lies for those Words, if spoke there. *Vide.* 1 *Roll. Abr.* 550. *Pl.* 1. *Hill.* 15 *Car. B. R. inter Rily & Lew. is.* & *Trim.* 15 *Car. int. Hassel & Ca. prott.*

Where the Action lies, because possibly a temporal Damage may ensue. *Vi. Roll. Abr.* 58. *Pl.* 2.

Where the Words were a spiritual Slander, but the Loss of Marriage that happen'd thereby was adjudged temporal. 4 *Co.* 16. b. *Bul.* 48. *Cro. Eliz.* 639. *Poph.* 36. 1 *Sid.* 397. 1 *Ven.* 4.

Also that a Man may have a temporal Damage by the Loss of his Marriage, as well as a Woman. *Lat.* 218. 2 *Roll. Rep.* 373. *Palm.* 385. *Vide Cro. Jac.*

A married Man declar'd, one said of him, that he had had two Bastards 36 Years agon, and he should pay for keeping them, whereupon Words and Contention arose between him and his Wife, and he was in Danger to have been divorced; and held not actionable, because 'twas not said that he was *de facto* divorced. 2 *Roll. Rep.* 24-*Popb.* 140. *Cro. Jac.* 473. and there said this suppos'd Danger was a vain Fear.

It was not held actionable where one said that the Plaintiff was with Child by *J. S.* whereby she got her Father's Displeasure, and was turn'd out of Doors. 1 *Ven.* 4.

But for saying she was a Whore, and he would marr her Marriage, by which she loses her Marriage, an Action lies. *Trin.* 22 *Jac. B. R. int. Tonsen & Spring.* So for Words in a Letter, *per quod J. S.* refused to marry her. 1 *Sid.* 79. adjudged. 1 *Lev.* 43. 1 *Keb.* 255, 269, 308, 326, 459.

For saying, She is a Man, and not a Woman, held actionable, special Damage being laid. *Cart.* 55.

She is a bursten-bellied Quean, and her Guts hang down to her Garters, by which she lost her Marriage with, &c. actionable. *Lit. Rep.* 193.

*Marriage lost,
&c.*

She is a Whore, and her Children (meaning those she had by her first Husband) are F's Bastards, by which she lost Marriage, being spoken of a Widow, actionable. *Cro. Car.* 322. adjudged.

The Defendant said of one that had many Suitors to marry her, She is with Child, and hath taken Physick for it, by which she came in Disgrace, and lost the Company of her Neighbours; held actionable, though not alledg'd that she lost any Marriage thereby. *Micb.* 21 *Jac.* B. R. *int. Medhurst & Balam. Vide Hesk.* 18. but see 2 *Mod.* 296. Special Damage must not only be alledg'd, but prov'd in Evidence. 1 *Sid.* 397. and 1 *Ven.* 4. and 1 *Lev.* 261. Same Case cited and denied *per Cur.*

What do you mean to entertain him? for he was a very harsh Man to his former Wife, and would not allow her Necessaries, and is of small Estate, *per quod* he lost, &c. held actionable. *Lit. Rep.* 193. *March* 2.

One said, Thou wast found in Bed with J. S. his Wife, by reason whereof he lost his Marriage with A. S. and held actionable, and so adjudged *int. Southall & Dawson. Mich.* 8 *Car.* B. R. *Cro. Car.* 269.

One said of the Plaintiff, He had the Use of my Wife's Body by Force; by Reason whereof he was examin'd before

fore the Justices for a Rape, and put to much Charge; adjudged not that an Action lies. *Int. Harris & Smith. Mich. 9 Car. B. R.*

See for other Words in Disparagement of Women for having Bastards, and making them away, &c. 1 *Roll. Abr.* 74, 79. *Pl.* 1. 36. *Pl.* 7. *Jones* 356. And *Palm.* 298. if it appears that by the Words spoken, the Party intends that the Bastard was chargeable to the Parish, according to 18 *Eliz. chap.* 3. an Action will lie, otherwise not. *Vide Style* 2, 21, 18. *Vide* 1 *Roll. Abr.* 38. *Cro. Car.* 436.

If one says of another, that has Lands *Heir by* *de-* by Descent, that he is a Bastard, an *sent,* &c. Action upon the Case lies; for this tends to his Disinheritance and Disturbance by Suit. *Mich.* 3 *Fac. B. R.* per *Cur.* *Vide* *Hern's Pleader* 111. *Co. Ent.* 28. *Pl.* 25.

But if one Man says of another, that has Lands, that he is base-born, no Action lies, because they may be taken in a mild Sense. *Mich.* 3 *Fac. B. R.* per *Cur.*

And if a Man says of the Son and Heir apparent of *J. S.* that he is a Bastard, no Action lies, because as yet he has no Prejudice thereby, but *Mich.* 3 *Fac. B. R.* per *Cur.* 2 *Ven.* 26, 27, 28. *contra*; and 4. *Co.* 17. *contra.*

The Plaintiff declared he was Heir Apparent to his Father, and B. his Brother, who intended to suffer their Lands to descend to him, &c. the Defendant said to him, Thou art a Bastard, by Reason whereof the Father and Brother intended to disinherit him, and convey their Lands to another; adjudged actionable. *Int. Humphrys & Stutfield. 1 Jones 388. Cro. Car. 469. Godb.*

451.

For calling Bastard, tho' not shewn he was Heir Apparent, or claim'd any Inheritance by Descent from any one. *Godb. 327. 2 Rol. Rep. 249, 250. 1 Rol. Rep. 244. Cro. Eliz. 346.*

For calling the Plaintiff's Father Bastard. *Dal. 63. adjudg'd pro quer. Alien. Godb. 328. Ow. 32. Vide Action pr. Fitz. Paisne* for calling the Bastard Eigne, lawful. *Dal. 63. Vide Cro. Car. 469. 2 Bul. 90. Cro. Jac. 324, 213.*

Words spoken of a Woman Copyholder; *Dum sola & casta vixerit, &c.* Thou art a Whore, and I will throw thee out of thy Living; actionable by reason of special Damage which may ensue; adjudged *int. Bays & Boys. Trin. 16 Car. 2. 1 Sid. 214. 4 Co. 17.*

Innholder.

It was held actionable to say of an Innholder, that he had buried divers in his Garden that dy'd in his House of the Plague *Reg. Orig. 173.*

So if one shall say of an Innkeeper, Victualler, or such like Person that keepeth a common Inn or House, that he or she hath in his or her House any great or infectious Disease, as the Plague, Pox, &c. whereby he or she lose his or her Guests, or have any special Damage; this is said to be actionable, though there be no Averment of any special Damage. 4 Co. 14, 17. *Popb.* 36.

To say of one that keeps an Inn, &c. *She is a Pocky She is a pocky Drab, doth wear a Drab, &c.* Scarf to hide her Blanchés in her Neck, it is a pocky Household; it seems is actionable. *Style's Rep.* 112. *Trin.* 9 *Jac.* *Ludman's Case.*

To call a Man a leprous Knave, or Dangerous a Leper, an Action lies. *Hab.* 219. *Noy Disceſe.* 117. *Cro. Jac.* 144. 430. but to say he has the Falling-Sickness, no Action lies. *Rel. Abr.* 55. 21.

One said of an Innkeeper, Thou art rotted with the Pox; held actionable, for this cannot be intended of the natural Pox, for no Rottenness comes of that. *Cro. Eliz.* 648. 1 *Rel. Abr.* 61. *Pl.* 15. 67. *Pl.* 22.

An Action, it's said, lies for presenting the Wife of an Innkeeper for a Scold, by which such and such Guests in particular left the House. 1 *Ken.* 348. Not so of a Stage-Coachman. *Id.* 34.

One said *J. S.* had the French Pox, and hath set it in the House of *J. N.* and his Wife hath it, and all you; actionable, (*J. N.* being an Innkeeper) tho' it was objected, that it was impossible the House could have the Pox. *Stylé's Rep.* 112.

Note, But such like Words spoke of another that is no Innkeeper, &c. will not be actionable, unless the Speech be concerning the French Pox, and then 'tis dangerous.

To say of one that he hath the Great Pox, is actionable; so for this, He hath caught the French Pox, and carried them home to his Wife. *Cro. Jac.* 430. 1 *Rol. Abr.* 66. *Pl.* 16. 1. *Brownl.* 11. *Hob. fol.* 29. but for saying generally, Thou art a Bawd, no Action lies, and so if it amounts to no more by Circumlocution. 1 *Sid.* 241. *Raym.* 115. So to say, You are a Pimp, and a Bawd, and fetch young Gentlewomen to young Gentlemen; not actionable, unless he kept a Bawdy-House. 1 *Ven.* 53. 1 *Sid.* 438. but 1 *Mod.* 31, 32. Judgment for the Plaintiff *Niff.* *Vide Cro. Car.* 261. 1 *Rol. Abr.* 45. *Pl.* 20. *Cro. Jac.* 462. Neither for calling a Man Pimp. *Cro. Car.* 339. 1 *Ven.* 53. *Style* 326.

If a Man said of a Woman, That she is a lewd or common Woman of her Body, and has the Pox, an Action lies; for the last Words shew that he

he intends the French Pox. 1 *Rel. Rep.*

420.

Thou art burnt, and hast the Pox,
actionable. *Cro. Eliz.* 2. Thou art a
burnt Whore. 2 *Sid.* 5.

Thou art a Whore, and a base burnt-
arse Whore; actionable. 2 *Sid.* 5.

So if he says that such a one is eaten
out with the Pox; actionable. 1 *Rel. Rep.*

420.

Thou art a pocky Knave, & et thee
home to thy pocky Wife, her Nose is
eaten with the Pox; actionable. *Cro. Eliz.*
878. 2 *Brownl.* 276.

Mrs. M. is a Whore, and hath the
Pox, and had Holes in her Face that
she might turn her Finger in them: *J.*
R. (who was a common Surgeon) gave
her a Diet-drink, I wish you to take
heed how you drink in a Cup with her;
actionable. *Cro. Jac.* 430. 1 *Rel. Abr.* 43.
Godb. 340. 2 *Rel. Rep.* 145. 342. *Palm.* 65.

One Man said of another, Thou art
a Rogue, and a pocky Rogue, and the
Pox haunts thee twice a Year; held
actionable. 1 *Rel. Abr.* 67. *Pl.* 17.

So for this, Thou wast laid of the
Pox, for this is the Phrase for the Cure
of the Great Pox. *Cro. Eliz.* 289. 2
Brownl. 276. *Cro. Eliz.* 215.

One said, Thou art infected of the
Pox, and thy Wife was laid of them;
Action lies, for it appears he intends
the Great Pox. *Cro. Eliz.* 789. 1 *Rel.*
Abr. 61. *Pl.* 15. 67. *Pl.* 19.

I

One

The Trades-Man's Lawyer, and

One said, Thou art a pocky Whore, and the Pox have eaten out the Bottom of thy Belly, that thy Guts are ready to fall out; actionable. *per Cur.* 2 *Brownl.* 276. *Mich.* 7 *Jac.* B. int. *Miles* and *Bland.*

One Man said of another, Hang him, hang him, he is full of the Pox; I marvel you will eat or drink with him; not actionable, for the Uncertainty what Pox he intended. 4 *Co.* 17. *Moor* 573. *Pl.* 786.

One said of another, He is rotted with the Pox; actionable, for it must be intended the Great Pox, because Rotteness comes of them only. 1 *Rel. Abr.* 61. *Pl.* 15. 67. *Pl.* 22. *Cro. Eliz.* 648.

One said, Thou art a pocky Whore; go to *John Hawkins* the Leach for the Pox; not actionable: Away thou Pick-pocket, thou art a scurvy pocky Whore; not actionable. *per Cro.* *Jac.* 499.

She is a Whore, and a pocky-ars'd Whore; actionable, for when the Words Whore and Pox are join'd, the French Pox is plainly intended. 1 *Sid.* 50. adjudged on Error.

Thou art a Whore, and a pocky Whore; actionable. *Cart.* 55.

Yet, Thou art *D's Hackney*, thou art a thieving Whore, a pocky Whore, and I will prove thee a pocky Whore; not actionable. *Cro. Jac.* 514. adjudged. *Godb.* 278. adjudged.

One

One said, Thou art a base Fellow, and hadst the French Pox; not actionable, for perhaps he had the Pox, but is now cured thereof, and no Body will now avoid his Company for that; adjudged. 1 *Rel. Abr.* 48. *Pl.* 2. *Al.* 31. *Noy* 151.

One said of another, Thou art a Bastard-getting Rogue, and hast a Bastard at *Oxford*, and a pocky Rogue, and for ought I do know thou hast fill'd my Bed full of the French Pox, and no such pocky Rogue shall lie in my Bed; actionable, for all being laid together, it appears that he intended the French Pox: Adjudged *Trim.* 1650. *Int. Blage & Elliott.* *Style* 283.

To say of an Innkeeper, &c. He doth keep a Bawdy-house, is actionable. 1 *Bul.* 138. 4 *Co.* 14. 17. *Cro. Eliz.* 582. 643. *March* 212.

So of a Woman keeping an Alehouse, Hang thee, Bawd, thou art worse than a Bawd, thou keepest a House worse than a Bawdy-house, and thou keepest a Whore in thy House to pull out my Throat. *Hughe's Rep.* 40. *Noy* 117.

To say of a Tradesman generally, Thou art a Rogue, and an errant Rogue, and I will prove thee to be a Rogue, or thou art a branded Rogue, and a Rogue by the Statute.

Or

Or, Thou art a Varlet, a Knave, or a false Knave ; these like Words it seems are not actionable. 1 *Cro.* 403. 2 *Cro.* 104. *Hob.* 188. 2 *Cro.* 204. *Mich.* 41 & 42 *Eliz.*

Knave.

But though these Words (you are a Knave) spoken generally, will not bear an Action ; yet if they be applied particularly to the Profession of him against whom they are spoken ; as to call an Attorney at Law Knave, and to apply it specially to him, in Relation to his Practice as an Attorney ; an Action it's said will lie. For by the Application they import a special Damage done to the Party by speaking of them. *Style's Pract. Reg.* 351. *Vid.* 1 *Vent.* 98. *Raym.* 196. 2 *Keble.* 710. 1 *Mod.* 272. See 1 *Vent.* 117. 149. 1 *Lew.* 297. He hath forged his Uncle *Rowe's* Will, is actionable. See 1 *Vent.* 3. *Vid.* 2 *Vent.* 28. Of slanderous Words writ in a Letter concerning a Lawyer.

Rules from the whole.

From the whole of what has been said, these Things must be observ'd concerning Tradesmen.

Plaintiff must set forth what Trade he is of certainly.

1. That he that brings an Action for this Slander, must in this Action brought, set forth himself to be a Merchant, Mercer, Baker, &c. or of some one Trade or other in certain : For it will not be sufficient for him generally to say he is a Tradesman. *Style's Rep.* 420. 426.

2. A Baker, and such like, ought to set forth that he is a common Baker, and not a Baker for a Time only. *Hutt. 49.*

3. He must set forth he was such a Tradesman at the speaking of the Words. *the speaking of the Words.*

Note, And yet a Declaration saying that the Plaintiff, *fuit Mercator per Magnum tempus*, not saying he was so at the Time, was held good. *1 Bul. 36. 1 Cro. 273.*

4. That the Words be spoken with Reference to the Trade, or that be general and relative Words to the Trade, that must be so understood; as Bankrupt, or the like: For being spoken of another Thing, they may not be actionable.

And *note*; That a Man may not justify the calling of another Bankrupt, for calling one because he was once a Bankrupt, unless he be a Bankrupt at the Time he calls him so. *4 Co. 17, 18. 2 Cro. 578.*

5. That if the Case will bear it, it is best to make an Averment in the Declaration of some special Loss that the Party of whom the Words were spoken hath sustained by them.

Note, For in many Cases for Words that are not actionable, if the Party of whom they are spoken have any special Loss by them, they may happily bear an Action. *1 Cro. 100. March Rep. 96.*

6. That the Words spoken ought to be false, malicious, certain, &c. For if they be true, or not malicious, or subject to be qualified by other Words (as possible they may) they will not bear an Action. &c.

And

Rule.

And it is said 1 *Lev.* 115. That an Action lies for speaking scandalous Words in Reference to a Man's Trade or Profession, let it be never so mean; but the Words must be set forth to be spoken upon a Discourse concerning the Party and his Trade or Profession. *Vid.* 1 *Cro.* 371. 2 *Cro.* 674. *Vid.* 1 *Lev.* 25, 112, 115. 2 *Lev.* 62. 1 *Sid.* 48. *Raym.* 62, 75, 169. 2 *Saund.* 307. *Cro. Car.* 417. *Pl.* 32. with many other Authorities.

The Chief Justice said, That where a *Officer in Trust.* Man hath been in an Office of Trust, to say that he had behaved himself corruptly in it, as it imported great Scandal, so it might prevent his coming into that or the like Office again, and therefore was actionable. 2 *Vent.* 266. *Vid.* 3 *Lev.* 30. 50.

Note, The Law gives an Action for but a Possibility of Damage, as calling an Heir apparent Bastard. *Idem* 26, 27.

Also it's said, that upon Words spoken in Defamation of a Woman, by which she loses her Marriage; if the Action be brought within two Years after the Loss of the Marriage; the Statute of Limitations is not pleadable, although the Words were spoken ten Years before, if the Words themselves are not actionable without Loss of the Marriage. 1 *Lev.* 69. 261.

*About Mar-
riage.*

A Minister having agreed to be retained a Chaplain to the Duke of Ormond, brought an Action against one for saying,

Chaplain.

saying, He has a Bastard on the other side the River; and 'tis so indubitable, that I fear not to divulge it, and if I am troubled for it, I can justify it, by which he lost the Chaplainship; and adjudged actionable, and that his Preferment was temporal like a Parsonage. 1 *Lev.* 248. 1 *Sid.* 376. 4 *Co.* 17. a. 1 *Rel. Abr.* 58. *Pl.* 2.

But for this, *P.* is an Adulterer, and hath had two Children by the Wife of *J. S.* and I will cause him to be deprived for it, held not actionable, because the Matter is examinable in the Spiritual Court only. *Cro. Eliz.* 94. 502. *Noy* 64. and no special Damage laid in the Case.

To say of a Minister who is instituted and inducted into a Benefice, He preacheth Lies in his Pulpit, an Action lies, for a Lie is a false Thing against his own Knowledge; and this is good Cause of Deprivation, by which he may have a temporal Loss. *Hill.* 1652. *int. Drake & Drake.* *Style* 363.

So for this, Thou hast made a seditious Sermon, and moved the People to Sedition this Day. 4 *Co.* 19. a.

But for this, He is a Preacher of false Doctrine; not actionable. *Style* 49. But *Note*, It did not appear there that he had any Benefice.

A Man said of a Church-warden having Discourse of his Office, and his receiving Money to the Use of the Office. Thou art a cheating Knave, and hast cheated

cheated the Parish of 40 *l.* and held an Action lies. *Int. Strode and Holms, adjudged Trim. 1652. Style 338.*

One said the Mayor of *Tiverton* had couzen'd the Town and Country; held not actionable. 1^o *Jones 308.*

The Plaintiff shew'd he had been Constable and Church-warden. Thou hast beguiled and deceiv'd the Town upon thy Account of 4 *l.* and 'tis no Marvel thou growest rich, when thou deceivest the Town; not actionable, for the Charge is too general. *Cro. Fac. 339. adjudged. Int. Hutten and Beech.*

Witch.

Judgment was given against the Defendant for saying of a Man's Wife, You are a Witch, and I will hang you for it, &c. *Idem 255. See 3 Lev. 166, 171. 248, 394, 395. Vide ante.*

Inchanters.

It was held after Judgment, that these Words, Thou art an Inchanter, and enchanted'st a Bullock, and madest him run mad about the Common, were not actionable, because an Inchanter is no other than a Cheat that deals in Charms to cheat, and he might make the Bullock run mad about the Common, by chasing and chasing him. *Idem 276. See before concerning Witchcraft.*

Scandalum Magnatum.

It was held actionable, and *Scandalum Magnatum* to say of a Peer to *J. S.* one of his Servants, viz. [I met *J. D.* (another of the Lord's Servants) whom I do not know, but my Lord sent after me

to take my Purse] because the common People would understand it that the Lord sent him to do it: And though it is not said feloniously to take it (a good Exception in the Case of a common Person) yet not allow'd in this: And in the Case of a common Person, these Words are held actionable: I heard a Bird sing, or, I dreamed J. S. stole a Horse. *Idem* 277. *Leon.* 336. *Vid.* 1 *Lev.* 148.

But it's said, If a Man brings a Writ of Forgery against a Peer, &c. and the Defendant by the Jury is found not guilty, yet shall not he have a *Scandalum Magnatum*, and lay the Charge contain'd in the Action to be a Scandal. *Hob. Rep.* 350. *Moor* 38. *Pl* 123. *Hetl.* 55. *Hob.* fo. 266. *Dyer* 285. *Pl.* 37. *Keilw.* 26, 27.

Where upon scandalous general Words, &c. a *Scandalum Magnatum* will lie. 1 *Lev.* 277, 148. 1 *Ven.* 50, 60. 1 *Sid.* 434. 1 *Keb.* 813. 2 *Keb.* 537, 559, 605. 1 *Mod.* 232, 233. 2 *Mod.* 150, 151. 1 *Leon.* 336. *Cro. Eliz.* 1. *Cro. Jac.* 196. *Stat.* 2 *Rich.* 2. *Cap.* 5.

Thus much of Actions for Scandal and Slander against Tradesmen, &c. which may be sufficient for this Treatise.

CHAP. XIX.

*Concerning Leases, Mortgages, Corn
sown, Waste, Distresses, Replevin,
and several other Matters between
Landlord and Tenant.*

*Vide Appen-
dix, Tit. Lea-
ses, p. 44, 45.
Landlord and
Tenant.*

IN all Leases there must be Lessor and Lessee: He which demises or lets Land to Farm is the Lessor, and he who takes the Land is called the Lessee; otherwise they are called Landlord and Tenant, or Landlord and Farmer.

And *note*, That now-a-days every Lessee for Life, Years, or at Will, tho' it be but of a Cottage, or never so small a Tenement or House, is called a Firmor or Farmer, and the Premises a Firm or Farm. See *Tenants Law*. p. 41.

*Firmor or Far-
mer.*

But anciently the chief Messuage in a Parish or Country Town, was call'd by way of Pre-eminency by the Name of a Farm, and unto this Farm belonged great Demesnes of all Sorts, as Gardens, Meadows, Pastures, Rivers, Woods, Moors, Waters, Marshes, Furzes, Heath, and also Messuages, Houses, Tofts, Mills, and the like; and all these are comprehended under the Title of Lands. These Demesnes were used to be let out to others

Demesnes.

others for Term of Life, Years, or at Will. *Ibid.* 42.

These ancient Farms or Firms attained to this Title from the old Saxon Word *Fermion*, which signifies to feed, provide, or yield Victuals; so that a Farmer signifies a Victualer; for anciently the Landlords did not receive Money upon their Leases for their Rent, but Corn and Victuals, being such as the Farm yielded of its Growth, until it came by Degrees into Part Money, and Part Victuals; and at last, about the Time of King Henry the First, the Rent reserved was turn'd into Money, and so hath hitherto continu'd amongst most Men. *Id. ibid.*

Yet amongst some, the Rent is in Corn or Victuals to this Day, especially in College and Church-Leases.

Note, Leases for Years may be made ^{*Leases for*} by Word of Mouth, but such Leases ^{*Years*} will be void if they exceed three Years from the making; also if they do not exceed 4 Years, yet two third Parts of the improv'd Value of the Thing demised must be reserved to the Landlord by the Statute 29 *Car.* 2.

Also it behoves that he who makes such a Lease be seized of the Lands and Tenements at the Time of such Lease made, for upon the Action of Debt brought, the Tenant may plead he had nothing in the Premises at the

Time of the Lease made; but if it be by Indenture in Writing, the Tenant cannot plead this Plea, nor to a Covenant. See *Landlords Law*, 3.

All Leases for Years reserving Rent must be made of Lands and Tenements, whereunto the Lessor may come to disfrain, so that a Rent cannot be reserved by a common Person out of any incorporeal Inheritance, as Advowsons, Commons, Offices, Tithes, Fairs, Markets, Liberties, Franchises, and the like; but if a Lease be made by Deed in Writing of one of them, one may have an Action of Debt by Way of Contract, but one cannot disfrain; but if any Rent be reserved in such Cases upon a Lease for Life, it is utterly void. 7 Co. f. 23. Co. 1. par. Inst. 47. T. L. 43. L. L. 2. See after at the latter End of this Chapter, concerning Distresses.

Leases for Term of Years are Chattels; so that if a Man have a Lease of Lands for five hundred Years, it is a Chattel, and goes to his Executor or Administrator, if he dispose not otherwise of it before his Death: 23 Lib. Ass. 6.

Every Man who is seized of Lands in Fee-Simple, may lease out his Lands for what Time or Term he pleaseth himself; and so likewise might Bishops have done formerly, before the Statutes restrained them. 32 H.

1. c. 28. 13 Eliz. c. 10. 18 Eliz. c. 6.
 1 Jac. c. 3. *Herne's Law of Conveyan.* 602.
 67, 68.

A Tenant in Tail being at Age, may by Deed in Writing lease out such Lands as have been let to Farm twenty Years next before the Lease made, reserving the old Rent, or more: The Words *Without Impeachment of Waste* must be omitted in it, and it must commence from the Day of making, or Date; and if there be an old Lease in being, it must be surrender'd, exchanged, or ended within one Year after the making of the new one, or else the new one is void. And a Lease thus made, binds the Issue of the Tenant in Tail, if he die before the Term be out; but if the Tenant in Tail die without Issue, the Donor may avoid the Lease by his Entry, and so may he in Remainder; and tho' he accept the Rent, yet he doth not thereby confirm the Lease. *Tenants Law,*

Note, It must be either for three Lives or twenty-one Years, and no longer. See

Tenant in Tail.

44.

A Man that is seised in Lands in Fee-Tenant in Tail Simple or Fee-Tail in the Right of his in Right of his Wife, may make such a Lease by Indenture in Writing of his Wife's Land, in the Name of himself and his Wife, and she to seal thereunto, reserving the Rent to himself and his Wife, and to the Heirs of his Wife; this Lease shall be good against the Woman and her Heirs after her Death. *Ibid.*

P 3

Bishops,

Bishops, Deans and Chapters observing the Rules aforesaid, may make Leases of such Estates as they are seised of in Fee in Right of their Churches: and so may Masters, Provosts, and Fellows of Colleges, and Wardens of Hospitals, if they be not prohibited by the private Statutes of their Foundations.

*Three Lives, or
for twenty and
three Years.*

But neither Tenant in Tail, nor any of the Persons before named, can let for any longer Term than three Lives, or one and twenty Years; but for what Term under they please; but if they do not observe these Rules in their Demises, yet their Leases shall be good against them for their Lives. *Tenant's Law* 45, 46. *L. L.* 5, 6, 7.

*Certainty of
Time leased.*

Generally a Lease for Years must be for a Time certain, and ought to express the Term, and when it should begin, and when it should end certainly; and therefore a Lease for a Year, and so from Year to Year, is a Lease for two Years.

Also a Lease from Year to Year so long as both Parties please, after Entry in any Year, it is a Lease for that Year, &c. till Warning be given to depart, *Noy's Max.* 65.

*What is com-
prehended.*

Under the Name of Lands are comprehended not only Gardens, Meadows, Pastures, Rivers, Woods, Moors, Waters, Marshes, Furze, and Heath, but also Messuages, Houses, Tofts, Mills, Castles, and such like. *Co. Li. l. 1. ca. 2. Sect.*

Sec. 14. but of a House with the Appurtenances no Land passes.

A Lease beginning from henceforth *When it begins* shall be accounted from the Day of Delivery. From the Making shall be taken inclusive from the Day of the Making; if from the Date, or from the Day of the Date, it shall begin the next Day following the Date.

If the *Habendum* of a Lease be for 21 Years, without mentioning when it shall begin, it shall then begin from the Delivery. *Co. Litt. 46. Hern. Con. 15. & 131.*

Prebendary made a Lease for Life, to hold from the Date, and Livery made the same Day; it was objected, that it ought to commence from the Day of the Date, and so Livery given the same Day was void; but the Court at length held it good, and gave Judgment for the Defendant.

A Lease is made to commence after the Death of J. S. his Son, without Issue. J. S. hath Issue and dies, and then the Issue dies without Issue, the Lease commences; for Issue being a Word collective, whenever the Issue fails, the Term commences.

A Lease made to begin from the End of a Lease misrecited, shall commence presently. *1 Vent. 83. 1 Lev. 234.*

And a Lease without any Date specified, or an impossible Date, as from the 40th of Sept. shall commence presently.

1 Vent. 137.

P 4

A

A Lease made to commence after the End of another, and there is none, it shall commence presently. 1 *Lev.* 77.

When to determine.

If one that leases at Will does any Act inconsistent with the Continuance of the Lease at Will, it shall determine it from such Time as the Tenant at Will takes Notice of it. If the Lessor says, The Lessee shall hold it no longer; the Lessee (as soon as he knows of the Words) may take Advantage of them as a Determination of the Will. 1 *Vent.* 247. *Raym.* 224.

It was resolv'd, that a Lease for a Year, upon no other Consideration than reserving a Pepper-Corn, if it be demanded, shall work as a Bargain and Sale, and so to make the Lessee capable of a Release. 2 *Mod.* 249. 1 *Mod.* 262. 2 *Vent.* 35. 10 *Co. Sutton's Hospital's Case*; and that the Reservation made a sufficient Consideration to raise an Use, as by Bargain and Sale.

A Lease for 99 Years, if two Persons so long live, determines upon the Death of either. 2 *Vent.* 74. 5 *Co.* 9. 2 *Cro.* 378. *Dyer* 67. & 1 *Inst.* 225.

Where several Lands, held Part for Life, and Part for Years, are demised to A. for Years, to hold from the Time of the Death, Surrender, Forfeiture, or Determination of the Estate and Term aforesaid of the first Lessee, and the Estate in one of these Parcels determines, the Term granted

to *A.* shall commence immediately in the said Parcel, although the other Estates are in being. 1 *Saund.* 183.

If a Lessee enters before his Term *Disseise.* commences, and continues in Possession after, he is a Disseisor all the Time. 1 *Lev.* 46.

Upon a Lease made to two for their Lives, without Impeachment of Waste during the said Lessees Lives, it was held that this Privilege would hold to the Survivor; for 'tis reasonable to give the Privilege as large a Construction as the Interest. *Anderson* 251.

If Lands descend to an Heir, before his Entry he may make a Lease thereof. *Noy's Max.* 65.

Tenant for Term of Years may enter *When the Tenant* when he will; the Death of the *Lease* Lessor is no Let, and he may grant away his Term before it begins. *Noy's Max.* 30.

But before he enters, he cannot surrender, nor have any Action of Trespass, nor take a Release. *Ibid.*

He is bound to repair the Tenements *Repair.*

And if Tenant for Life or Years Term *forfeited.* granteth a greater Estate than he hath himself, he doth forfeit his Term. *Ibid.*

Note,

Sealing Lease.

Note, If the Lessor seal the Lease, and not the Lessee, yet it is good against the Lessor as if both had sealed.

Noy's Max. 57.

Principal and Counterpart.

And if at any Time there happen any Variance between the Indentures, it shall be taken as the Deed of the Lessor is, and the other shall be intended only the Mistake of the Writer, because the Deed of the Lessor is the Principal, and the other but only a Counterpart. *Noy Ibid.*

How suable and releaseable.

Deeds between Parties indented or not indented are suable and releaseable by the Parties, and not by Strangers, altho' they are to the Use of the Strangers. 3 *Lev.* 138.

To plead a Writing under a Man's Hand, does not imply a Deed. *Ibid.*

234.

Where Covenants are annexed to Assignments.

When a Covenant extends to a Thing in Being, Parcel of the Demise, then the Thing to be done by Force of the Covenant is annexed, and appurtenant to the Thing demised, and shall bind the Assignee, although by express Words in the Covenant he be not bound. *Ibid.* See after.

But if the Covenant extends to a Thing which had no Being at the Time of the Demise made, that cannot be annexed or appurtenant to a Thing which had no Being. *Ibid.* See after.

If

If a Lessee covenant to repair the Houses demised to him during his Lease, this is Part of the Contract, and shall bind the Assignee, although by the Covenant he be not expressly bound. 3 Lev. 138.

But where the Covenant concerns a Thing not in being at the Time of the Demise, but to be made after; this shall bind the Covenantor, his Executors and Administrators, but not the Assignee. *Ibid.* 48.

If a Lessee covenant for him and his Assigns to build a House upon the Land of the Lessor, which is not Parcel of the Demise, or to pay any collateral Sum of Money to the Lessor, or to a Stranger, this shall not bind the Assignee. *Ibid.*

So if a Man demise Lands for Years, with a Stock of Cattle, or Sum of Money rendring Rent; and the Lessee covenants for him, his Executors, Administrators and Assigns, to deliver the Stock of Cattle, or Sum of Money at the End of the Term; this Covenant shall not charge the Assignee. *Ibid.*

If an Assignee of a Lease be evicted, he may have a Writ of Covenant; so shall a Tenant by Statute or by *Elegit*, or he to whom a Lease is sold by Virtue of an Execution. *Ibid.*

If

*Land and
Stock of Cat-
tle demised.*

2fevers.
Vid. prox.
pag. 66.

If a Man grant to a Lessee for Term of Years, that he shall have so many Estovers as shall servé to repair his House, or that he shall burn in his House, or the like, during the Term; this is appurtenant to the Land, and shall run with the same as a Thing appurtenant, in whose Hands soever the same cometh. *Co. Inst. 1 Par. 41.*

The Statute extended only to Covenants which touch the Thing demised, and not to collateral Covenants. *32 H. 8. c. 24.*

An Assignee of an Assignee, Executors of an Assignee, Assigns of Executors or Administrators of every Assignee, may have an Action of Covenant; for all are comprised within this Word (Assignees) and the same Right that was in the Testator or Intestate, descends to the Executors or Administrators. *Ibid.*

A Lessor may have an Action for Rent against the Executor of the Lessee, after an Assignment made by him. *1 Leon. 127.*

If an Assignee assigns over, until Notice given of the Assignment to the Lessor and Tender of Arrears, he cannot by the Assignment discharge himself of the Rent. *1 Lev. 215.*

A Lessee for 100 Years being out of Possession cannot assign. *Ib 270.*

Lessor

Lessor assigns his Rent upon a Lease for Years, and the Lessee attorns; it is said the Grantee may maintain an *Actio Grantee*. on of Debt for the Rent. 1 *Lev.* 22. *Vid.* 3 *Cro.* 637. 651.

Debt for Rent.

Tenant for Life leased for Years. the Lessee assigns to him by Parol without Deed rendering Rent. Justice *Hale* said, That although his Assignment by operation of Law turned to a Surrender, it was not an express Surrender; and if the Rent was not good by way of Reservation, it was good by way of Contract; and so by Assent of the Judges Judgment was given for the Plaintiff, although all the Days were not passed. 2 *Lev.* 80.

A Lease is made of a House and *Essement*. Wood, wherein it is covenanted that the Lessee should have Houseboot and *vide post.* 262. Fireboot; by this it is implied and 263. 4. meant, that he shall not have any of the Woods to use or convert to any other Purpose; but that they do belong to the Lessor; and the Lessor shall have Help in *Chancery*, leaving to the Lessee sufficient for Houseboot and Fireboot. *Tenant's Law* 50.

If a Man lets Lands to another by Lease, to hold the same at the Will of the Lessee; the Law intends it to be at the Will of the Lessor also, and he *Tenant at Will* may

may put the Lessee out when he pleases; likewise if it be at the Will of the Lessor, it is intended at the Lessee's Will also; for the Lessor cannot force him to stay longer than he pleases, *Tenants Law* 51. *Coke 1. part Inst.* 55.

Covenant.

A Covenant made between Landlord and Tenant, that the Tenant shall have a new Lease upon the Surrender up of his old Lease; and afterwards the Lessor makes a Lease by Fine for more Years to a 3d Person; in this Case the Lessor hath broke his Covenant, although the Lessee did not surrender: which by the Words of the Covenant ought to have been the first Act; because the Lessor by letting the Lease to a Stranger, did disable himself either to take the Surrender or make the new Lease. *Idem* 52.

Rent in Arrear upon a Lease for Years, goeth to the Executors of the Lessor if he die. *Ibid. vid. Posses.*

Covenants to do collateral things not annex'd.

A. B. lets a Lease for Years to W. C. and the Lessee covenants with the Lessor for him and his Assigns, to build a Brick-wall or an House upon the Lessor's Land, or pay a colateral Sum of Money to the Lessor; and afterwards the Lessee assigns over his Term to another: here this Covenant shall not bind the Assignee, because the Things were only collateral, and were not *in Esse*, nor Part of the Demise at the Time of the Lease made. *Vide Hern. Con.* 107. *Godb. Rep.* 69, 70. *Ten. Law*, 47, 52.

If

If there be a Covenant in a Lease, that if the Rent be behind and unpaid for such a Time (that is, by the Space of so many Days after the usual Day or Time of Payment, in the Lease appointed and reserved) then the Lease to be void: In this Case, although the Lessor do accept of the Rent after such Failure made, here no such Acceptance of the Rent can make the Lease good. *Ten. Law* § 3. *Dyer* § 1.

If a Tenant take Houses and Lands *repairs*.

by Lease for Years, and covenants with the Lessor to support, uphold, and maintain the Houses during this Term. and to leave the Houses and Lands in as good Repair, Plight, and Estate as he found them: In this Case, if it should happen that the Houses be casually burned by Fire or Lightning, or blown down by a Tempest, or destroyed by any other Accident; if the Lessee do not repair and build them again, and leave them as good as he found them, the Lessor may sue his said Covenant against him at the End of his Lease; but if a Tenant make Waste in cutting of Wood or Timber contrary to the Proviso's, Exceptions or Covenants in his Lease, for such a Breach the Landlord may bring his Action of Covenant before the End of the Term, *Noy's Max.* 16.

A Man takes a Lease for Years, and covenants and grants to and with the Lessor, for him and his Executors, to repair

At the end of the Term.

*As often as
Need requires.*

pair the Houses as often as Need requires: and afterwards the Lessee assigns over his Lease to another, and the Assignee suffers the Houses to decay for Want of Repairs; in this Case the Lessor may bring an Action of Covenant against the Assignee, although he be not named in the Covenant. *Hugb's Grand Abridgment, 1 Par. p. 492. c. 19.*

Hedge-boot.

A Landlord lets a Lease, and covenants with his Tenant that he shall have sufficient Hedge-boot, to be assigned him by the Landlord or his Bailiff; In this case the Tenant may not take Hedge-boot without Assignment. *Co. 1. Inst. 41.*

*Old ruinous
House.*

If a Man by Indenture take a Lease of a House that is old, ruinous, or wanteth Repairs, and covenants with the Lessor to leave this House at the End or Expiration of the Lease in good Repair; in this Case he is bound to leave this House in good Repair: But if he do not covenant to do it, the Law then will not oblige him to do it. *Perkins's Tit. Conditions, 738.*

A Man by Indenture takes a Lease for Years of a Wood, and covenants with the Lessor to leave his Wood in as good a Condition as it was at the Time of the Lease made; and during the Term the Wood is destroyed and blown down by violent Winds and Tempests: In this Case the Landlord can have no Action against the Tenant for the not performing

impossibilities.

ing of this Covenant, because it is impossible for him to perform it; and the Law enforceth no Impossibilities; otherwise it is if he take a House, and that be blown down. *Hughes's Grand Abridgment* p. 499.

Touching Bonds for Performance of Covenants; if a Man take a Lease for Years rendering Rent, and enter into Bond to the Lessor to perform all Covenants and Agreements contain'd and comprized in the Lease; if he fail in Payment of Rent the Bond is forfeited; for the Payment of Rent is an Agreement. *Goldsbr.* p. 16.

If a Man makes a Lease for Years with Warranty, yet this is not a Warranty in the Law, but a Covenant; because the Lease is but a Chattel: And if the Lessee be ousted, he may bring his Action of Covenant against the Lessor. *Ten. Law.* 57.

If *A.* be seized of twenty Acres of Land, and let the same to *B.* by Lease for Life or Years, and *A.* reserve to himself five Shillings Rent, payable at *Christmas*, and *B.* binds himself to *A.* in a Bond of one hundred Pound, to pay the Rent reserved upon the Lease justly according to the Law; if before any Day of Payment *A.* puts *B.* out of any Part of the Land, and he doth occupy the Residue for the whole Term, and will not pay any Rent, yet the Bond is not forfeited; for by putting the Tenant out

Q

Bonds to perform Covenants.

Bond not forfeited.

*Rent is Suf-
ficient.*

of Parcel of the Land, the whole Rent is in Suspence: but if one Day of Payment be past before the *Ouster*, then the Tenant must pay the Rent, or else he forfeits his Bond. *Ten. Law, §7.*

But if a Stranger who hath no Right in the Lands, do put out the Lessee for Years out of the same Land before any Day of Payment, and keep Possession thereof untill the Day of Payment be past; in this Case the Tenant ought to pay his Rent at the Day whereon it is appointed to be paid, or else he forfeits his Bond. *ibid.* Also see *Landlords Law.*

Reviver.

In what Case there shall be a Reviver of Rent, and in what not. *Vid Litt. Rep. §8.*

Suspension.

In what Case there shall be a Suspension of Rent. *Idem.*

Apportionment.

Where there shall be no Apportionment of Rent. *Id. 61.* And how the Word *Annuitim* or *Yearly* shall be taken.

Note, That where a Fine is levied to a Lessee for Years, with an Intent that he should suffer a Recovery, his Term is not drowned. 1 *Vent. 195.*

But if Tenant for Life, with Power to make a Jointure, suffers a Recovery, the Power is extinguished. *Id. 226.*

Lease by a Tenant in Fee, and Rent reserved to the Lessor, his Executors, Administrators and Assigns; the Words Executors and Administrators are void. *Id. 162.*

If

If a Man covenants not to inclose, *Inclosure.*
Inclosure with Gaps is a Breach of the
Covenant. *Litt. Rep.* 267.

Also where two Closes are in the *Extinguishment of Fencing, &c.*
same Possession, the Duty of Fencing
is extinguished, and shall not revive
though the Closes come after into several
Hands. 1 *Vent.* 97. *Dyer* 295.
Popb. 172. 1 *Cro. Baker* and *Bereman's*
Case.

If a Lessee assigns over his Term, re-
serving Rent, it will be extinguish'd by
releasing all Demands. 1 *Vent.* 314. 1
Mod. 99.

But it was said that a Rent inci-
dent to a Reversion would not be
barred by such Release. 1 *Vent.* 314. 1
Sid. 141.

Also it's said that a Man cannot *Release by Will.*
release a Debt by his Will. 1 *Vent.*

39. Administrators shall be charged for
Rent after the Assignment of the Te-
stator's Term. 2 *Vent.* 209.

Where a Man covenants for himself
and his Assigns to permit, &c. If a
Breach be laid in the Assigns, this Co-
venant shall relate only to the Assigns
after the Deed was made, and not be-
fore. *Id.* 278.

Where Lessee covenants to build
three Houses upon the Premises, and
keep them in Repair, he builds four,
and lets one fall to Decay; and judged
that

that the Covenant extended to that also. 2 *Vent.* 128. *Vid.* 3 *Lev.* 269.

A latter Covenant by a second Indenture cannot be pleaded in Bar to the former; but the Defendant must bring his Action on the last Indenture if he will help himself. *Id.* 218.

Rent.

Every Quarter's Rent is a several Debt, and distinct Actions may be brought for each Quarter's Rent. 2 *Vent.* 129.

Executor.

A Debt for Rent is payable by an Executor before Bonds, because it favours of Realty, and is maintained in Regard of the Profits of the Land received. *Id.* 184.

Watercourse.

If a Man by Deed grants a Watercourse, and stops it, the Grantee shall have an Action of Covenant. 1 *Saund.* 322.

Esfrovers.

If a Lease be made of a House and *Esfrovers*, and the Lessor destroy all the Trees, the Lessee may have an Action of Covenant. *Id. ibid.*

Pump.

Also if a Lease be made of a House and a Piece of Land (except the Ground on which a Pump stands) with the Use of the said Pump, the Lessee may repair the Pump, but no Action of Covenant lies against the Lessor for not repairing it. *Ibid.*

When the Use of a thing is granted, all is granted by which the Grantee may have and enjoy such Use. *Id.*

Although

Although the Breach of the Testator's Covenant is by the proper Default of his Executors; yet the Judgment ought to be of the Goods of the Testator. *Idem*, 112.

An Action of Covenant does not lie against a Grantor for not repairing the Thing granted. 1 *Saund.* 322.

An Assignee of a Reversion may maintain Covenant for Repairs against the Lessee, although Assignees are not named in the Covenant in the Lease. 1 *Lev.* 109. Covenant lies for a Grantee of a Reversion against the Lessee after Assignment of his Term, 3 *Lev.* 233.

Any Words in a Deed purporting an Agreement to pay Money, &c. amounts to a Covenant to do it. 1 *Lev.* 48.

A *Proviso* to pay, amounts to a Covenant to pay. *Id.* 155.

Covenant that he or his Under-Tenants should not dig, &c. and B. who held of F. who holds of H. who held of E. did dig, &c. held B. was Under-Tenant of E. 1 *Lev.* 144.

A Lessee covenants with the Lessor, his Executors and Administrators, to repair, this shall go with the Land, *Heir.* and the Heir may sue upon it. 2 *Lev.* 92.

In expounding all Deeds, the Words and the Intent of the Parties ought to be observed, especially in Covenants. *Lit. Rep.* 209.

Q 3

If

Entry for Condition broken.

If a Landlord do enter for a Condition broken, or the Tenant surrender up his Lease, or his Term be expired, yet the Landlord may have an Action of Debt for the Arrears of Rent, if any be. *Ten. Law. Noy's 59. Max. 72.*

If a Man lets a Lease of Lands upon a special Condition; that is, that the Lessee shall not alien the same to such a Man or such a Man; then the Condition shall be taken according to the Words; and notwithstanding that Condition, they may be alienated to any other but to whom it is expressly prohibited that the Lands should not be aliened unto; and if the Lands in that Case be aliened to one that is not excepted in the Condition, then he may alien the Land to him that is first excepted, without breaking of the Condition; for Conditions are to be taken strictly in the Law, and without Equity. *Dr. & Stud. l. 2. c. 35.*

Note.

As if a Lease be made to *A.* upon Condition that he shall not let or alien the same to *B.* if the Tenant alien it to *C.* and he alien it to *B.* the Condition is not broken. See *Ten. Law, 90.* But it seems otherwise where the Lessee covenants not to alien, &c.

If

If a Man have a Lease for Years, and demise or grant the same upon Condition, and die, his Executors or Administrators shall enter for the Condition broken; for they are Privy in Right, and represent the Person of the Dead. *Perk. 833.*

If a Man make a Lease for Years upon a Condition that the Rent shall be paid at *Christmas*, and before that Time come, the Lessor give a general Release to the Lessee of all Actions and Demands, this Release doth not acquit the Lessee of the Rent, ^{*Where a Release doth not*} but the Lessor may sue for it; because it was neither due nor to be paid at the Time of the Release made; and it is a Thing not merely in Action, because it may be granted over. *Litt. lib. 3. c. 8.*

If a Tenant for the Term of another Man's Life die, living the other Man, he that doth first enter upon the Estate, after his Death, shall be Tenant for the other Man's Life, and shall be liable to the Payment of the Rent reserved. *1 Co. Inst. 41.*

In the Case of Occupancy (which arises by Conveyance) as,

Where Lands are convey'd to *A.* for the Life of *B.* and *A.* dies without making any Estate or Assignment thereof, here whosoever first entrench after the Death of *A.* getteth Property in that Land during the Life

Q 4 of

of B. for the Land cannot revert to him that leased to A. till B. die; and to the Heir of A. it cannot go; for it is not any Estate of Inheritance, nor descendible to the Heir (without special Words) and as for the Executors of A. they cannot have it; for that is not an Estate testamentary, to go to them as the Goods and Chattels do, so as in Truth no Man can entitle himself to the Land; and therefore the Law preferreth him that first entreth, and he is called *Occupans*, and shall hold it during the Life of B. but yet such a one must pay the Rent, perform the Conditions, and do no Waste or Harm. N. B. fo. 83. Co. Litt. 41.

Occupancy, how prevented.

But this Estate of the Occupant may be prevented at the making of the Grant, by adding these Words, *To have and to hold to A. and his Heirs during the Life of B. for then 'tis descendible to the Heir.*

It may also be prevented after the making of the Grant or Lease for Life, (though the Word *Heirs* be omitted) by assigning the Estate over to some Friends and their Heirs in Trust during the Life of B. &c. Co. Litt. fo. 41. *Shepherd's Touchstone*, p. 108.

Stat. 29 Car. 2.

And note, That the Statute of 29 Car. 2. hath provided, That the Lessee or Grantee may devise such Estate for

for another's Life by his Will, in Presence of three or more Witnesses.

If he devise it not, and his Heir become occupant, it shall be chargeable in his Hands, as Affets by Descent, as in Case of Lands by Fee-simple. *Stat. eod. Ibid.*

And in Case there be no special Occupant, then it shall go to the Executors or Administrators of the Party that had the Grant, and shall be Affets. *Stat. eod.* See the Statute.

Note, It hath been said, That Occupancies are taken away by the Statute of Frauds and Perjuries, as above.

But 'tis observed by others, the Statute doth not say there shall be no Occupant, but directs who shall be the Occupant in Case there is not a special Occupant by the limiting it to a Man, his Heirs or Executors. It fixes that the Executors or Administrators shall be the Occupant, and shall be Affets in the Hands of the Executors or Administrators; in Case there be no Executors named by the Party, nor any Administration, then the Executors must be an Occupant, as before the Statute.

And it is held by some, That an Executor *de son tort*, is as much within this Act to be charg'd as a rightful Executor.

That

That the Entring into the Land and Leasing it, is sufficient to make him Executor *de son tort. Q. de boe & vid. Co. 5. 33. b. Read's Case.*

*Lessee grants
Part of his
Term.*

If a Tenant hath a Lease for 20 Years of Lands and Tenements, and grant the same Lands for Part of his Term to a Stranger, reserving to himself forty Shillings Rent; in this Case he may distrain for the Rent reserved, or have an Action of Debt at his Pleasure, because by common Intendment he is to have the same Land after the Years determined; because he hath granted but Parcel of the Years, so that the Remainder remains in him.

*He may dis-
train.*

If Rent be granted to a Man, he may grant it away to another before he be seized thereof. *Co. Inst. 108.*

If a Man and his Wife be ejected of a Term in the Right of his Wife, and the Husband bring an *Ejectione firmæ* in his own Name, and do recover and die; in this Case his Executors shall have it, and not the Wife, because the Recovery in his Name did vest the Term in himself. *Co. 1 par. Inst. fo. 46.*

Ejection.

*Possessed in
Right of his
Wife.*

If a Man be possess'd of a Term of forty Years in Right of his Wife, and makes a Lease for twenty Years reserving Rent, and die; here the Executors of the Husband shall have the Rent for that Term, but the Wife shall have the Remainder

Remainder of the Term when the twenty Years are out: But if he had granted the whole Term, she could have had nothing. *Co. Ibid.*

A Release made to a Tenant for ^{Release.} Term of Years before his Entry is void; but a Release of the Rent before Entry is good. *Id. i. par. Inst. fo. 270.*

The Tenant may grant away his Interest to another before Entry; and although the Lessor do die before Entry, yet the Tenant may enter into the Lands; and if the Lessee die before he enter, his Executors or Administrators may enter; and if a Lease be made to two, and one of them die before Entry, the other may enter by Survivorship.

If a Man leases Lands for Years re-^{Apportionment.} serving Rent, and a Stranger doth recover Part of the Land, then the Rent shall be apportioned, *viz.* divided; and the Tenant shall pay, having Respect to that which is recovered, and to that which still doth remain in his Hands according to the Value, to each Party proportionably. *Dyer 56, 82.*

If a Man makes a Lease excepting a ^{Way.} Close and Wood, the Law giveth him a Way to come to it.

If a Tenant for Years do take a new ^{Surrender.} Lease for more Years, this is a Surrender in Law of the old Lease. *Watt and Maidwell's*

well; Case. Hill. 3 Car. R. 1302. B. R. Perk. 117. Hatton Rep. 104.

A Lessee for Years cannot surrender before his Term begins; neither can he surrender Part of his Lease, but he may grant Part of it. *Noy's Max. 74.*

If a Tenant for Life or Years remove his Goods out of the House and Land, by Reason of the Greatness of the Rent, or for any other Cause, and the Lessor do enter into the House and Lands; this is no Surrender of the Lessee. *Idem, p. 72.*

Assignment.

If a Tenant for Years assign over his Term and die, his Executors shall not be charged for Rent due after his Death. *T. L. 69.*

And if the Executors and Administrators of a Lessee for Years do assign over their Right in the Lease, here lieth no Action of Debt against them for Rent after such an Assignment by them made. *Ibid. but see before. 2 Vent. 209.*

Assignee accepted.

If a Tenant for Years assign his Lease to another, the Landlord may charge which of them he will; but if he once accept of the Rent from the Assignee, knowing of the Assignment, he cannot afterwards bring an Action of Debt against the Lessee, for Rent due after the Assignment. *Hern. Law of Convey. 110. Litt. Rep. 53. but see after that he may have Covenant.*

If

If a Lessor grant away the Reversion after the Assignment of the Lessee; in this Case the Grantee cannot have an Action of Debt against the Lessee for the Rent, because there is no Privy between them. *Popham* 55.

If a Lease for years be made to a Man without any Consideration, the Lessee shall be seized to his own Use. *Perkins. Sect. 536.*

If a Man make a Lease of Lands to another, and to his Heirs for the Term of twenty Years, intending that if the Lessee die within the Term, that then his Heirs should enjoy the Lands during the Term; in this Case his Intent is void: And if the Lessee die, his Executors, and not his Heir, shall enjoy the Term; for by the Law of *England* all Chartels shall go to the Executor, and not to the Heir. *Dr. & St. l. i. c. 24.*

If a Man lets a House with the Appurtenances, no Land passes thereby; but if it be with all Lands thereunto belonging, here the Lands used with the House do pass.

Of a House with the Appurtenances:

Concerning Payment of Rent, &c.

It ought to be a principal Care of a Tenant, above all things to provide his Rent at the Time of Payment, whereby he will avoid much Trouble that otherwise may happen.

If

If a Tenant be to pay his Rent to his Landlord at our *Lady-day* and *Michaelmas*, or within fourteen or fifteen Days after either of the said Feasts; in this Case he is not bound to pay his Rent until the last Day limited for Payment; for that is the legal Day of Payment, and the other before voluntary.

And if there be a Clause, that if the Rent be behind by the Space of fifteen Days (more or less) after any of the said Days of Payment, then the Lease to be void; in this Case if the Time limited be fifteen Days, then the Tenant shall have thirty Days after any of the said Feasts to save his Lease; but if the Clause in the Lease be, that if the Rent be behind for the Space of fifteen Days next after either of the said Feast-days of Payment, here the Tenant hath but fifteen Days only allowed him: And so the Diversity it is to be noted in this Case in the Words of a Lease, which with a very little and scarce observable Alteration, makes so much Advantage for the Tenant. *Co. 10. lib. f. 227. Co. 1. par. Inst. fo. 202. Herm. Law of Conv. p. 23.*

Where the Heir shall have the Rent.

If a Man take a Lease for Years to pay his Rent at our *Lady-day* and *Michaelmas*, or within fifteen Days after either of the said Feasts, and the Landlord die after either of the said Feasts, and before the fifteen Days be out, the Heir in this Case shall have the Rent then; for the first Day is but voluntary, and the legal Day of

of Payment is at the End of the fifteen Days: and if the Tenant before that Day pay the Rent, such Payment is voluntary and not satisfactory: But if Payment be in the Morning, and the Landlord die at Noon, it is good to give Seisin; and though this Payment be voluntary, yet it is satisfactory against the Heir. *Hare and Savill's Case, Mich. 7 Jac. in Com. B. Brownl. Rep. 2. part, 273.* fee after.

If a Tenant for Years be to pay his Rent at *Michaelmas*, and to perform other Covenants; and if he be bound in any Obligation to pay his Rent precisely at the Day, he must in this Case seek out his Landlord to pay him; but if his Obligation be only to perform the Covenants in the Lease, he may then tender his Rent upon the Land, (if no other place be by Agreement appointed for the Payment thereof) and it is sufficient; for the Payment is of the Nature of the Rent reserved. *Manley and Jennings's Case. Pasch. 10 Jac. in C. B. Brownl. Rep. 2. par. p. 176. Noy's Max. 80.*

When one is to pay Rent at a certain Day, he hath all that Day till Night to pay it; but if it be a great Sum he must then have it in a Readiness so long before Sun-set, as they that are to receive it may see to tell it; for they are not bound to tell it by Candle-light. *T. L. 74, 75.* fee after *Tender.*

If

The Trades-Man's Lawyer, and

If a Person let his Glebe-Lands to a Lay-man, the Tenant shall pay the Parson Tithe of that Land besides the Rent; for the Tithes are of Common Right. *T. L. 74, 75.*

stock leased.

If a Man let out by Lease a Stock of Cattle or other Goods, and the Rent be to be paid at several Days; if the Rent in this Case be in Arrear, the Lessor cannot bring an Action against the Tenant or Occupier thereof, until all the Days be expired: In like manner as it is in an Obligation with Condition for several Payments, because these are personal Contracts. But it is otherwise in Case of a Lease for Years, which is a real Contract; for there the Landlord may have an Action of Debt against the Tenant after every Day of Payment, if Default be made; or he may distrain, at his Election. *Idem T. L. 76. Co. 1. par. Inst. fo. 47. & 292.*

*Acceptance by
Barn.*

If a Man have Lands in the Right of his Wife, and he and his Wife let these Lands for Years reserving a Rent, and afterwards the Husband dies, and she before any Day of Payment takes another Husband, who accepts the Rent and dies; by this Acceptance the Lease is affirmed. *Idem*

77.

By the Feme.

In like Manner, if a Man and his Wife let the Lands of his Wife for Years-rendring Rent, and the Husband dies;

dies; if the Wife accept the Rent it is a good Lease. *Terms of the Law, Acceptance.*

But if a Tenant for Life lease Lands for years, and dies, the Lease is void, and the Rent which is reserved upon the Lease is determined: and although he in Remainder do accept the Rent, yet his Acceptance will not make it good; for when it is once void by Death, no Acceptance after will make it good. *T. L. 77.*

Lease by Tenant for Life.

If a Man let Lands for Life or Years, reserving Rent, and do enter into any Part thereof, and take the Profit; the whole Rent is thereby extinguished, and shall be suspended during his holding thereof. *Leonard's Rep. 110. Goddard's Case, Mich. 34 Eliz. Com. Banc. Owen's Rep. 10. T. L. 79. Hern. l. Convo. p. 118.*

Extinguishment.

Tender of Rent.

If the Tenant come to the Landlord at any Place upon the Ground at the Day of Payment, and tender his Rent to the Landlord, it is good enough, and shall save the Condition; and the Landlord is bound thereby to receive it, although it were not at the most notorious Place, nor last Instant of the Day; for he may tender his Rent at any Time of the Day, altho' the last Instant be the legal Time of Payment. *Co. 1 Inst. 202.*

But observe by the way, that a Tender of Rent must be of the whole, without Deduction of Taxes or Assessments, or any other Charges; for Stoppage is no

Without Deduction.

Pay-

R

Payment in the Law. *Tr. 23 Car. in B. R. Reg. Pract. p. 327.*

If a Man let Land by Lease for Years to another, reserving Rent of the Land to be paid at *Michaelmas* and our *Lady-day*, or within fifteen Days after, and for Default of Payment to re-enter: In this Case it is sufficient and lawful for the Tenant to tender his Rent the last Hour of the last Day, if the Money can be told in that Time before it be dark; and so it is sufficient for the Landlord to demand it the same Hour. *Co. 1 par. inst. f. 202. T. L. 80.*

Re-entry.

Re-entry and Distress.

If a Lease be made with Proviso, That in Case of Non-payment the Landlord to re-enter; Here if the Landlord distrain he may not re-enter, but he may accept of the Rent and yet re-enter; but if he do receive the next Rent again, then he cannot re-enter, for that establisheth the Lease. Entry into an Acre of Land, in the Name of the whole is a good Entry, if the Land do all lie in one County. *1 Par. Inst. p. 211.*

It is said, that although the Time of Sun-setting is the Time appointed by Law to demand Rent to take Advantage of a Condition of Re-entry, and of tendering Rent to save a Forfeiture, yet it is not due until Midnight; for if a Man demands till Sun-set, yet if after Sun-set, and before Midnight he dies, his Heir shall have the Rent and not his Executors, which proves the Rent is not

Lessor dies before Midnight.

Heir shall have the Rent.

not due until the last Minute of the natural Day. *Vid.* 1 *Saund.* 287.

A Man seized in Fee ought to reserve the Rent upon a Lease to himself and his Heirs; for it appears, that if a Man seized in Fee makes a Lease for Years, reserving Rent to himself and his Assigns, this Rent is extinct after the Lessor's Death, because it was not reserved to the Lessor and his Heirs. (*vid. postea.*)

So if a Man seized in Fee lease one Acre of Land reserving 10 s. Rent to him and his Heirs, and also lease another Acre reserving other 10 s. Rent to himself, without saying, (and to his Heirs) the Heir shall not have the last Rent; but it is extinct by the Death of the Lessor. 2 *Saund.* 368, 369.

But if one seized in Fee reserve a Rent upon a Lease for Years, *durante termino*, to the Lessor, his Executors, Administrators and Assigns, and not to his Heirs; yet by a Grant of the Reversion from the Lessor, the Rent is well transferred to the Assignee; and in such Case the Rent being transferred to the Assignee, the Law transfers also to him the Covenant of the Lessee for the Payment of it, as incident to the Rent. 2 *Saund.* 369. &c. See after.

And in the Case of *Sacheverel* vers. *Frogatt*, 2 *Lev.* 13. the Rent was reserved to him, his Executors and Assigns, the Heir brought an Action,

R 2

Reservation by him seized in Fee, &c.

Rent extinct by Lessor's Death.

Such Rent transferred to an Assignee.

To him, his Executors and Assigns.

and upon a Demurrer, it was argued for the Defendant, that the Rent determined by Death of the Lessor; but the Chief Justice *Hale* said, The Rent being reserved to him, his Executors and Assigns, would continue and go to the Heir for the apparent Intent that it should endure after his Death; otherwise it could not go to the Executors, and that without the Words *durante termino*. But 'tis otherwise where him or his Assigns; and after two other several Times of Argument, Judgment was given for the Plaintiff.

Otherwise if to vante termino. But 'tis otherwise where him or his Assigns.

If a Man make a Lease for Years rendering Rent, during the Term generally, and does not say to whom, the Law will make Construction, that it shall be paid during the Time to them who have the Reversion, and to whom from Time to Time it shall appertain.

2 *Saund.* 369.

Reservation of Rent generally.

*Father and Son and Heir apparen-
rent make a
Lease.*

Where a Father is seized in Fee, if he and his Son and Heir apparen- rent by Indenture make a Lease for Years, to commence upon the Death of the Father, rendering Rent to the Son by Name, although the Son be Heir to his Father he cannot have this Rent as Heir, because the Rent was not reserved to the Heir; and he cannot have it by the Reservation of the Lease, because he was a Stranger

Stranger to the Land, and had nothing in it at the Time of the Lease made. 2 *Saund.* 370.

If a Lessor seized of a Reversion in Fee demise the Reversion expectant upon an Estate for Years, to a Stranger for Life, reserving Rent when the Reversion shall happen: In such Case he shall have no Rent during the Continuance of the Term for Years; for a Reservation of Rent shall be construed most strongly against the Lessor himself. 2 *Saund.* 166, 368.

If a Man makes a general Release of all Demands, it doth not release Rent due upon a Lease for Years. 2 *Lev.* 210.

By Acceptance of Rent by the Lessor from the Assignee, the Privy of the Contract is extinguished, and the Action of Debt against the first Lessee is gone. 1 *Saund.* 240, 241. 2 *Part.* 304. But after such Acceptance the Lessor or his Assignee may maintain an Action against the first Lessee upon his Covenant for Payment of Rent. *Idem* 240. *Vid.* 2 *Saund.* 302.

A Lessor may refuse to accept an Assignee to be his Tenant at one Time, and yet may accept of him afterwards, when he pleases. 2 *Saund.* 182. And so may have his Election to sue the Lessee or his Assignee for the Rent; but after Acceptance from the Assignee it is otherwise, as above.

R 3

Action

*Rent lost.**Assignee Acceptance of Rent from him.**Assignee accepted Tenant.*

Action of the Case lies not for one Tenant in Common against another who disposes of the Whole. 1 *Lev.* 29. for either of them has Power to dispose of the Whole, and it was said there could be no Fraud between Tenants in Common.

*Assignee of a
Moiety.*

Action of Debt lies for the Lessor against an Assignee of a Moiety of the Land for the Moiety of Rent. 2 *Lev.* 231.

Reversion of a Term is not assignable without Deed and Attornment. *Vid.* 3. *Lev.* 155.

It was held that the Assignment by the Executors of a Lessee, before any Rent Arrear, was good without Notice of it. 3 *Lev.* 295.

*Surrender of
the first Lease.*

If a Man make a Lease to another for one and twenty Years, and after another Lease, to commence from the End and Expiration of the said Term of Years, and afterwards the first Lease is surrender'd; in this Case the second Lease shall commence, presently upon the Surrender. *Co.* 1 *Par. Inst.* fo. 45.

But if it had been made to commence from the End of the said one and twenty Years, there, though there had been a Surrender, yet it should not have commenced till the Term had been out. 1. *L.* 83.

It was said, that no Surrender of an Estate can be perfect without Acceptance by the Surrenderee. 2 *Vent.* 199.

Thomp-

Thompson versus *Leach*. But that Judgment was afterwards reversed in Parliament, so that it appeareth that a Surrender divesteth the Estate immediately before express Assent of the Surrenderee. *Idem* 203. See after.

If a Lessee for Years grant a Rent-Charge, and after surrender; yet for the Benefit of the Grantee, the Term hath Continuance, altho' in Truth, it is determined, and the Grantor himself shall not derogate from his own Grant, to make it void at his Pleasure. *Ten. Law*, 46. 8 Co. 144.

Note, An Estate vesteth immediately after a Surrender made, before Acceptance or Agreement, but it divests by Refusal afterward. 3 *Lev.* 284.

If a Man lets Lands to another to hold till the Lessee hath levied twenty Pounds; this is a good Lease, notwithstanding the Incertainty. *T. L.* 84.

So if a Man make a Lease to another for so many Years as *J. S.* shall name, altho' this be incertain at the Beginning, yet when *J. S.* hath named the Years, it is then good for so many Years as he names. *Ibidem*.

So likewise, if *A.* be seized of Lands in Fee, and do grant to *B.* that when he pays him twenty Shillings, that then from that Time he shall have and occupy the Land for one and twenty Years; and after *B.* pays unto *A.* the twenty Shillings, this is a good Lease for one

R 4

Lessee grants a Rent-Charge.

Refusal of Surrender.

Incertainty.

Made certain.

and twenty Years from that Time. *Co. 1. par. Inst. 45. Co. 6. 34, 35.*

If a Lease be made for one hundred Years, if *A.* and *B.* live so long; in this Case, if either of them die, the Lease is ended. *T. L. 86.*

For Life of A. and B.

Infant.

If an Infant who is seiz'd of Lands in Socage, make a Lease at his Age of fifteen Years; this is good, and shall bind him. *Co. 1. par. Inst. 45.*

Lease avoided, and again revived.

If a Tenant in Fee marry a Wife, and make a Lease of Lands for Years, and after die, and the Wife is thereof endowed; here she shall avoid the Lease, but after her Death, it shall be in Force again against the Heir. *Co. 1. par. Inst. f. 46.*

Possessed in Right of his Wife.

If a Man have a Term of Years in the Right of his Wife; if she die, it remains to him; but if she survive him, it remains to her, and not to his Executors, without he dispose of it in his Lifetime. *Co. 1. 8. f. 49.*

Licence to enter.

If a Man licence another to enter and occupy his Lands, this is a good Lease for Years in Law. *2 Brownl. 250.*

The longest Lease but a Chattel.

A Lease for Years, altho' it be never so long, cannot be entailed, because it is a Chattel which cannot be turned into an Inheritance. *Stylé's Regist. pract. p. 197.*

Lease for Life yet named.

If a Man seized in Fee-simple let a Lease to another, to have and to hold the same Lands for Term of Life, and doth not mention whose Life, it shall be taken

taken for the Lessee's Life; because the Act of every one shall be taken most strongly against himself.

But if a Tenant in Tail let such a Lease without expressing whose Life, it shall be taken for the Life of the Lessor. *T. L. 87.*

If a Joint-Tenant make a Lease for Years of his Part, though the Lessee never had Possession, or though it be to begin at a Day to come, and the Joint-Tenant that made it die before the Day, yet the Survivor shall be bound by the Lease, for the Lessee hath a present Interest. *Co. 1 Par. Inst. f. 185. T. L. ibid.*

If two take a Lease for their Lives, Reverted, and make Partition, either of them dying, his Part immediately reverts to the Lessor. *Id. 88.*

If there be two Joint-Tenants for Joint-Tenants Life, and one of them makes a Lease for eighty Years, to begin after his Death, and after dies; this Lease is good against the Survivor. *Goldf. Rep. 187.*

If a Lease be made to the Husband and the Wife, yielding a greater Rent than the Land is worth; if the Husband die, the Wife, after the Husband's Death, may refuse the Lease to save her from the Payment of the Rent; but if the Husband over-live the Wife, and then make his Executors, and dies; if they have Assets, that is, if they have Goods

suffici-

More Rent re-
ceived than the
Land is worth.

sufficient of their Testator to pay the Rent, they cannot refuse it: But if they have no Goods sufficient of their Testator, to pay the Rent to the End of the Term; if they relinquish the Occupation, they may by special Pleading discharge themselves of the Rent and the Lease. *Dr. & St. lib. 2. c. 33.*

Mines reserved.

If I let Lands in which are Mines or Trees, I cannot enter to take the Trees or Mines, but am a Trespasser, unless I do reserve such a Privilege to my self when I let the Lands.

But if a Lessor do come upon the Grounds leased he is no Trespasser; for it shall be intended that he came to see if Waste were done.

Note, If a Man opens a Mine in his own Land, he may dig and follow the Vein under another Man's Ground; but if the Owner dig there also, he may stop his further Progress. *2 Vent. 342.*

Lease casually lost.

If a Tenant for Years happen by any Casualty to lose his Lease, yet he shall not lose his Term in the Lands: let by such Lease which is lost, if it can be proved that there was such a Term let to him by Indenture, and that it is not determined. *T. L. 88, 89.*

Cancelled by Order, &c.

Where by an Order confirmed by Act of Parliament, that an Indenture shall be vacated and cancelled, 'tis not intended that the Indenture shall be void *ipso facto*; but that it shall be made void by Cancelling of it, and until the Cancelling

celling the Estate granted by the Indenture continues. 1 *Saund.* 201.

An insensible Clause does not make *insensible* the Residue of a Deed vicious, which is *Clause*. sensible of it self. 1 *Saund. Rep.* 320.

All Feoffments, Gitts, Grants, and Leases made by Durefs of Imprisonment are voidable, and that not only by the Parties themselves, but by their Heirs and those who have their Estates. *Perk. Sess.* 16. *Co. Litt. f.* 253. b

If a Lay-Man who is unlearned, and *Non est* cannot read, be bound to seal a *Lease*, *factum by an* Bond, or other Writing to another, in *illiterate Man* this Case he need not do it without there be some there to read them to him, if he request it, and in such Language as he understands: And if it be read amiss to him, or declared contrary to what it is, so as the illiterate Man is thereby deceived; as a Bond of twenty Pounds is read as of twenty Shillings, or a Feoffment of two Acres is read as of one, in such Case he may very well plead, that it is not his Deed; but if he request not to have the Writing read, though it be contrary to his Intent and Meaning, yet it shall bind him if he seal and deliver it; for it was his Folly that did not desire to have it read. *Co. 2. Rep. f.* 3, &c. *L. L.* 162.

If Tenant for Term of Years, or any *Time to fetch* other Tenant be ousted, or if they die, *away Utensile* their Executors, or they, if living, shall have reasonable Time, and free Liberty to

to come and fetch away their Utensils and other Goods out of the Lessor's House. *Lit. Ten.* p. 15. a. L. L. 164.

*Not above two.
Forms by one
Farmer.*

Note, That no Man ought to take above two Farm-Houses whereunto Lands are belonging either for Years, Life, or at Will, by Indenture, Copy of Court-Roll, or otherwise, on Pain to forfeit three Shilling four Pence for every Week he takes the Profits of them; and these two Farms must be situate in the same Parish where the Tenant dwells. 25 H. 8. c. 13. L. L. 164. See after.

Of Mortgages.

*Lands mort-
gaged thrice.*

Where Lands are mortgaged thrice over, the third Mortgagee may buy in the first Incumbrance to protect his own Mortgage, and he hath both Law and Equity for him. 2 *Vent.* 338.

That he shall hold the Land against the second Mortgagee until he be satisfied both the Money he paid the first Mortgagee, and also his own which he lent upon the last Mortgage. *Ibid.*

But where only Part of the Lands are mortgaged to the first, and the whole to the second, and after to the third; if the third buys in the first Title, it shall protect only that Part that is in the first Mortgage. *Id.* 339.

That

That a Purchaser or Mortgagee coming in upon a valuable Consideration without Notice, and purchasing in a precedent Incumbrance, it shall protect his Estate, though he purchased in the Incumbrance after Notice of a second Mortgage: 2 *Vent.* 339.

That Mortgages are not relievable in *Chancery* after 20 Years, for the Statute of 21 *Jac.* 1. c. 16 limits the Time of Entry to that Number of Years, &c. *Idem* 340.

That upon a Mortgage in Fee, the Redemption-Money shall be paid to the Executor, and not to the Heir. *Id.* 348, 351.

That the Court of *Chancery* cannot shorten the Time that is given by express Covenant and Agreement of the Parties, but when that Time is past, then the Practice is to foreclose. *Id.* 365.

But see *Herr's* Law of Conveyances, p. 144. If the Condition upon a Mortgage be to pay to the Mortgagee or his Heirs the Money, and before the Day of Payment the Mortgagee die, the Feoffor may not pay the Money to the Executors of the Mortgagee; for in this Case the Money ought to be paid to the Heir, and the Law will never seek out a Person when the Parties themselves have appointed one. 5 *Co.* 96. *Goodale's Case.* *Dyer* 1 *Eliz.* 181. But if the Condition be to pay the

the Money to the Feoffor, his Heirs or Executors, then the Feoffee hath Election to pay it either to the Heirs or Executors. 1 *Inst.* 209. See 2 *Co.* 79, 80. many excellent Matters touching Conditions.

Of Corn sown, who shall have the Crop, and of Estovers and Trees blown down, &c.

Tenant at Will.

If a Tenant at Will sow his Land, and the Landlord put him out before the Corn be ripe, he shall have Liberty to reap and carry away his Corn, because he knew not when his Landlord would put him out. *T. L.* 91. Also see *Landlords Law*, 165.

Tenant by Lease.

But it is contrary with a Tenant who hath a Lease for Years; for if his Lease be out before the Corn be ripe, his Landlord shall have it, because he knew the End of his Lease; wherefore if he sowed it, it is in his own Wrong, unless there be a Covenant in his Lease between the Lessor and him, that he shall have his way-going Crop. *Ibid.*

Way-going Crop.

Hemp sown.

But if a Tenant at Will set Roots, or sow Hemp or Flax, or any Thing that brings in any yearly Profit, if after the Planting the Lessor out him, or if the Lessor die, yet the Tenant or his Executors shall have the Crop. But it is otherwise if he plant young Fruit-

Fruit-Trees, or other young Trees, as Oaks, Ashes, or Elms; or sow the Ground with Acorns; in this Case, if the Lessor cut him, he shall have none of these, because these yield no yearly Profit at present. *T. L. 91. L. L. 166.*

If a Tenant for Life soweth the Ground, and die before the Crop be ripe, his Executors shall have it, and so they shall have Grass if it be cut; but if it be unmown they shall not have it, for that is Part of the Inheritance till it be severed. *T. L. 91. and L. L. 166.*

Every Tenant that hath an Estate incertain, shall have the Corn sown by him, though he be outed before it be ripe. *Ibid.*

If a Tenant for Life lease for Years, and the Lessee sows the Ground, and before it be ripe the Tenant for Life dies, yet notwithstanding the Lessee for Years shall have the Corn, or his Executors if he be dead. *Co. Litt. f. 55. b. L. L. 167.*

Tenant for Life, the Remainder in Fee, Tenant for Life leaseth for Years, the Lessee is ousted by a Stranger, and the Stranger sows the Land, and the Tenant for Life dies; in this Case it was resolved that the Corn of Right belonged to the Lessee of Tenant for Life, and not to the Stranger,

ger, nor him in Remainder. 5 Co. Rep. f. 85. Goldf. Rep. 143. Pl. 60. L. L. 167.

If *A.* hath a Lease of Land for the Life of *B.* and sow the Land, and before the Corn be ripe *B.* dies, yet notwithstanding *A.* shall have the Corn; for his Estate was determined by the Act of God; and the Reason why a Man which hath an uncertain Estate shall have the Corn, is, for that he hath manured the Land, and therefore it is Reason that he that laboureth should reap the Fruits of his Labour. L. L. *Ibid.*

*Benefit to the
Manurer.*

*Lease of
Ground sowed.*

Therefore if a Man make a Lease for Life of Ground sowed, and before Severance the Lessee dies, in this Case the Lessor shall have the Corn, and not the Executors of the Lessee for Life; for the Corn came not of the Manurance of their Testator. And if Lessee for Life sow the Land, and then assign over his Interest, and dies before the Corn be severed, here he in Reversion shall have the Corn, and not the Assignee of the Lessee for Life. Goldf. Rep. 144. L. L. 168.

*Devise of
Lands sowed.*

If a Man by his Will devise Lands sowed to one for Life, and after his Decease, the Remainder to another for Life, and the first Tenant enters and dies before Severance, and he in Remainder enters; now he shall have the Corn, and not the Executors of the first

first Tenant for Life. Goldsb. Rep. 144.
L. L. *ibid.*

If a Man be seized of Land in Right of *Husband's Benefit*, his Wife, and sow the Land, and die, *vest.* his Executors shall have the Corn; but if they be Joint-Tenants of Lands, and the Husband soweth the Ground and *Wife's Benefit* dieth, the Wife shall then have it. Co. Litt. f. 55. b. Perkins Sect. 518. Dyer 316. T. L. 92.

And if a Woman who is a Tenant for Life, or in Dower, take an Husband, and he sow the Land, and before it be ripe she dies, yet the Husband shall have the Corn. Cowel's Inst. 141. Swinb. Sect. 6. p. 163. T. L. 92. L. L. 169.

And so if the Husband let the Lands *Lessee's Benefit of the Wife's* of his Wife for Years, and the Lessee sows the Lands, and before Severance *Land let by the Husband.* the Wife dies, yet the Lessee shall have the Corn, or his Executors, if he be dead. The like Law of Lessee for Years, of Tenant by the Curtesie, when Tenant by the Curtesie dies before his Lessee's Corn is ripe and severed. Cowel's Inst. p. 141. L. L. 169.

If a Woman who holds Lands *Durante viduitate sua* sow the Ground, and then takes Husband before the Corn be severed; in this Case the Lessor shall have the Corn. And so if Tenant *Lessee's Benefit.* at Will sow the Land, and then will occupy the Land no longer, he shall then lose the Corn; and the Reason hereof is, because the Determination of their

Estates

S

Estates grew by their own Act. *Co. Litt.* 55. b. 5 *Co. Rep.* 116. *L. L.* 169. *T. L.* 90.

But if such a Woman who holds Lands *Durante viduitate sua* lease the same Lands to another, and the Lessee sows the Land, and then the Woman takes Husband; which determines her Estate, yet notwithstanding the Lessee shall have the Corn. So if a Tenant for Life lease for Years, and the Lessee sows the Land, then Tenant for Life commits a Forfeiture, so that his Lessor enters. Yet the Lessee of Tenant for Life shall have the Corn; but if Tenant for Life sows the Lands, and then commits a Forfeiture, and the Lessor enters, here he shall have the Corn, and not Tenant for Life, because the Determination of his Estate grew by his own Act. *Goldsb. Rep.* 189. *L. L.* 170.

Contra.

Husband leases his Wife's Land in his own Name only, in his own Name only. A Lease made by the Husband of the Wife's Land in his own Name only, is void after his Death; but if the Lessee have sown the Land he shall have the Corn. *Noy's Max.* 70. *L. L.* 170. *T. L.* 50.

Lessor's Benefit by Surrender. If the Lessee sow the Land, and then surrender his Term, the Lessor or he to whom the Surrender is made shall have the Corn; so if a Man enter for Condition broken, he shall have the Corn, and not he that sowed the Corn; for his Entry over-reacheth the

the Estate of the other. *Goldsb. Rep.* 189.
L. L. 170.

If Lessee for Years sow the Lands, and by Waste, then commits Waste, and the Lessor recovers the Land in an Action of Waste, here the Lessor shall have the Corn sowed. *Perk. Sect.* 515. *Covel's Inst.* 142.
L. L. 171.

If there be a Landlord and Tenant, *Where the* and the Land is recovered by a Title *Land is reco-* Paramount against the Landlord; in *vered by Title* this Case if the Tenant have sowed the *Paramount.* Land he that recovered shall have the Corn, if it be not severed before Judgment; but if a common Recovery be had against the Landlord in a Writ of Entry *en le poss.*, or in any other Writ by a false and feigned Title; in such Case the Lessee shall have the Corn. *Co. on Litt.* 142. *Perk. Sect.* 515.
L. L. 171.

If an Abator, after the Death of *Where an Aba-* the Ancestor, enter and sow the Land, *tor sows the* and after the right Heir doth enter; *Land.* in this Case the Heir shall have the Corn. So if a Disseisor sow the Land, *Disseisor.* and then the Disseisee entreat upon him, or recovereth in an Affize before the Corn be severed; in this Case the Disseisee shall have the Corn; but if it were severed before the Entry or Recovery, though it remain still upon the Land in Sheaves or Cocks, there the Disseisor shall have it. But
 it

Trees.

it is otherwise in the Case of Trees severed from the Land, for if they be not carried off the Land before the Disfeisor's Entry, he shall then have them. *Goldsb. Rep.* 144. *Perk. Sect.* 519. *L. L.* 176, 177.

Widow's Dower.

If a Widow have Land assigned to her by the Sheriff for her Dower, and this Land is sowed with Corn; here she shall have the Corn. *Vid. Perk. Sect.* 521. 15 *Eliz.* *Dyer* 319. *L. L.* *ibid.*

Statute of Merton.

Note, That the Statute of Merton, *Ch. 2.* which giveth, *Quod omnes vi-
duæ de cætero possint legare blada, &c.* as unto this Point, is but in Affirmance of the Common Law; for if Tenant in Dower soweth the Land which she holdeth in Dower, and dieth before Severance, her Executors shall have the Corn if she do not devise it to another; and so was the Law taken in the Fourth of *Hen. 3.* *Devise* 6. which was sixteen Years before the making of the Statute of Merton. *Perk. Sect.* 522. *Co. 2. par. Inst.* 83. *L. L.* 173.

Tenant in Tail.

If Tenant in Tail sow the Land, and give me the Corn, and die before I have severed it from the Land, yet I may afterwards sever the same and take it; for that the Executors of the Tenant in Tail should have had it. *Perk. Sect.* 59. *L. L. ibid.*

But

But if Tenant in Tail give or sell to me a Tree growing upon the Land, and dies before I have the Tree, and his Issue entrench into the Land where the Tree is growing, now I cannot Tenant in Tail. cut the Tree but he may have Trespass against me; but it seems if it were cut in his Life-time, I may then take it away after his Death. But *Quare* of this; for some are now of a contrary Opinion: *Kitch.* 226. a. b. 27 H. 8. fo. 6. P. 18 E. 4. fo. 6. a. and *Hill.* 18 E. 4. fo. 21. b. in the End. *Perk. Sect.* 58. L. L. 173.

If Tenant in Fee simple give or sell By Tenant in me a Tree growing upon his Land, and die before I have cut it, yet I may have it after his Death if I please. *Perk. Sect.* 58. L. L. *ibid.*

There is three Kinds of *Estovers* in the Law, which is incident to the Estate of every Tenant, whether it be for Life or Years.

House boot, of which there are two Kinds; the one to repair the Houses, the other to burn, which is called *Fire-boot*.

Then there is *Estovers*, called *Plough boot*; that is, Stuff to mend the Tenant's Ploughs, Carts, Harrows, Wains, and making Rakes and Forks for getting in his Hay and Corn.

Hedge-boot.

Thirdly, There is another kind of *Essovers* call'd *Hedge-boot*; this is Timber and Wood for making Gates and Stiles, and Boughs and Bushes for mending and repairing Hedges and Fences.

So there is *Essoverium edificandi & arandi*, House-boot.

Essoverium arandi, or Plough-boot.

Essoverium claudendi, or Hedge boot.

T. L. 93. L. L. 173, 174.

Essover or *Boot* signify an Allowance, Compensation, or Satisfaction; and any of all these Boots aforementioned, a Tenant may take without Assignment of the Landlord, unless he be by the Landlord restrained by special Covenant in his Lease, which is very usual amongst many Landlords, especially if the Farm be any thing considerable, then they commonly limit the Tenant how much *House-boot* or *Plough-boot*, or *Hedge-boot* he may take without Assignment, and how much by Assignment. T. L. 94. L. L.

174.

If a Tenant for Life or Years cut down Trees, or pull down Houses, or suffer them to fall down, the Lessee for shall have the Trees and Timber of the said Houses; for the Lessee had them only as Things annexed to the Land, and this Severance will not give him a greater Estate in them, but his Interest is then determined.

Essovers restrained by Covenant.

Tenant suffers Houses or Trees to fall.

terminated. *Co. l. 4. 31, 62. T. L. 94. L. 175.*

The Landlord shall likewise have *Windfalls*. Windfalls, that is, Timber-Trees blown down by Wind and Tempest, because they are Parcel of his Inheritance; so that the Tenant for Life nor Years cannot have them unless it be to build withal, where Houses are in Decay; but if they be Dotards or Pollards without Timber, which bear neither Leaves nor Fruit in Summer, the Tenant shall have such when they are blown down. *T. L. 94, 95. L. L. 175. Dyer 332.*

Essovers granted to be burnt in such *Fire-lust*. a House, shall go to him that hath the House by whatsoever Title; for one is inseparably incident to the other. *Finch l. l. c. 3. p. 15. 1 Perk. Sect. 104. Kitchen 51. a. L. L. 175. 5 Co. 17.*

Lessee for Life or Years, Tenant in Dower, or by the Courtesie, or Tenant in Tail after the Possibility, &c. have only a special Interest or Property in the Trees, as Things annexed to the Lands, so long as they are annexed thereto; but if they or any other sever the Trees from the Land, then their Interest is determined, and the Lessor may take the Trees as Things that are Parcel of his Inheritance, the Interest of the Lessee being determin'd. *4 Co. Rep. f. 62. Noy's Max. 65. L. L. 176.*

*Trees cut down
by a Stranger.*

If a Stranger cut down a Tree growing upon the Land of the Lessee for Years, and carry it or the Bark thereof away; the Lessor at his Election may either have an Action of Trover against the Stranger, or an Action of Waste against the Lessee; for the Property of the Timber is always in the Lessor, *non obstante* the Statute of Gloucester which gives him his Action of Waste; and so was the Opinions of *Jones, Whitlock*, and *Richardson. Hill. 7 Car. 1.* in *B. R. Berry and Reed's Case, Cro. Rep. 1 per. L. L. ibid.*

*Estovers in
certain.*

If one have Estovers in certain in ten Acres of Wood, and five of them descend to him, he shall have the whole out of the Residue. *Critica Juris Ingeniosa, P. 123.*

If a Man grant to another Estovers in certain in such a Wood, and afterwards the Grantor makes such Waste in the Wood, as that there is not sufficient Store left out of which the Grantee may take his Estovers; in this case he may have a *Quo Minus* against the Grantor, which is in Nature of a Prohibition, forbidding him to make such Waste. *L. L. 177.* See more of Waste after.

*Quo Minus
for the Grantee
about Estovers.*

*Quo Minus
in the Exchequer.*

There is also another Writ of *Quo Minus*, which every Farmer of the King may have out of his Exchequer against one that is indebted to him, in which Writ he doth surmise, that unless the said

said Party pay him his said Debt, he is thereby less able to pay the King his Farm. *Termes de la ley.* *ibid.*

Concerning Waste, and what Waste shall be Waste. punishable, and what not. Also concerning Forfeitures by Copyholders, &c.

If a Tenant for Life or Years, or in Houses pulled down, do pull down any of the Houses down, &c. or Tenements, or suffer them to be uncovered, to the rotting or destroying of the Timber or Materials of the House; this is Waste. *Co. 1. par. Inst. 53.*

So likewise if Glass-Windows be broken down or carried away, it is Waste, though the Tenant glazed them himself; for the Glass is part of the House. It is also Waste to take away Wainscot if it be fixed to the Walls or Posts of the House. *T. L. 121.*

It is likewise Waste to take away Doors and Windows, or any Thing annexed or Things fixed, fixed to the Freehold, altho' the Tenant fixed them there himself.

If a Tenant build a new House where none was before, it is Waste; and if he suffer it to be wasted, it is a new Waste.

The pulling down of a Stone-Wall, or Mud-Wall of a House, is Waste. *Co. ut supra.*

If a Tenant of a Park, Warren, Dove-house, or the like, do not leave such sufficient Store as he found when he entered, it

it is Waste; and so it is to suffer a Park-Pale to decay, whereby the Deer are lost or dispersed. *T. L.* 121.

If a Tenant suffer the Houses to be wasted, and then sell Timber to repair them, this is a double Waste.

Waste is properly in Houses, Gardens, and Timber-Trees; that is, Oak, Ash, and Elm, which are counted Timber generally in all Places, except in some Copyholds Elm is not.

Now these Timber-Trees are said to be wasted either by cutting them down, lopping, or topping them, or any other ways decaying the Timber.

And in some Countries where Timber is scarce, Beech is accounted Timber, or other Trees used for building Houses; and there the cutting of them is Waste. *Idem.*

Or if a Tenant suffer the young Germans of Trees to be destroyed, this is Destruction, and punishable in Waste.

To cut down any Trees, as Willows, Birch, or the like, which stand and grow in the Defence, and within View of the Dwelling-house, is Waste.

It is a Waste to cut down Hazels which grow not under the great Trees, but in a Quarter of the Wood by themselves. *T. L.* 122.

If a Tenant grub up or destroy a quick Fence of white Thorn, it is Waste. *Co. 1 par. Inst.* 53.

Burning

Timber.

Other Trees.

Burning a House by Negligence or *Husfa* burnt. Mischance, is Waste.

Where is a Wood, and nothing grow. *Woods* and ing there but Underwood, the *Tenant Tree*. cannot cut all: But if it be a Wood where great Trees grow amongst the Underwood, there he may cut all the Underwood.

It is Waste to cut Apple-Trees, if they *Fruit-Trees*. bear Fruit, tho' they lie on the Ground. It is also Waste to cut Damascen-Trees, or any Fruit-Trees growing in a Garden or Orchard.

To dig for Gravel, Chalk, Clay, Brick, *Digging*. Earth, or Stones, or the like, is Waste; and so it is if a Tenant dig for any Mines which were not open at the Time of the Lease made.

To suffer a Bank or Wall of the Sea *Sea-Banks, &c.* to be in Decay, so that by the Flux and Reflux of the Sea, the Marsh is overflown, so that it becomes unprofitable, is Waste. *T. L.* 123.

But if a Sea break in suddenly by a violent Tempest, it is no Waste.

It is Waste also if a Tenant suffer the Banks of any River or Water to decay whereby the Ground is surrounded or becomes unprofitable: So it is to suffer Pasture-Ground to be surrounded so as it becomes rushy; or Arable Land, so that it becomes tough Clay. *T. L.*

124.

It

*Converting of
Land.*

It is Waste for any Tenant to convert Arable Land into Wood, or Meadow into Arable.

Punishment.

The Punishment in Waste is treble Damages, and Forfeiture of the Place wasted.

There is a voluntary or actual Waste, and permissive Waste.

*Tenants by
Courtesie, &c.*

An Action of Waste lieth against a Tenant by the Courtesie, Tenant for Life or Years, half a Year, or Tenant in Dower, by him that hath the Estate of Inheritance, in any of all these Cases before mentioned.

But Waste doth not lie against a Guardian in Socage, but an Action of Account or Trespas.

Neither doth Waste lie against a Tenant by *Elegit*, Statute-Merchant, or the Staple; but an Action of Accompt after the Debt and Damages levied. *T. L.* 124.

Waste doth not lie against a Tenant at Will; but if such Tenant voluntarily pull down Houses, or cut down Timber-Trees, or the like; in this Case the Lord may have an Action of Trespas against him. *Co. 1, par. Inst.* 54.

But against a Tenant in Mortgage, either an Action of Waste or an Accompt will lie against him, because his Estate is conditional. *Noy's Max.* 33.

*Tenants in
Common, &c.*

If two or more Joint-Tenants, or Tenants in Common be in a House, and one will repair the House and the other

other will not ‡ in that Case he that will repair it may have a Writ de Reparatione faciend.

If a Landlord covenant to repair the Landlord cove.
House, and doth it not, in this Case the tenant.
Lessee may cut Timber growing upon
the Ground and repair it, though he be
not compellable thereunto; and shall not
be punishable in Waste for so doing. T.

L. 125. See after.

No Man can have an Action of Waste, *Who may have*
unless he have the immediate Estate of the *Alien.*
Inheritance; but some time another
shall join with him. Co. 1. par. Inst. 53.

As if a Reversion be granted to two,
and the Heirs of the one, they two shall
join in an Action of Waste.

In like manner the surviving Copart-
ners and the Tenant by Courtesie shall
join in an Action of Waste.

If a Tenant for Years commit Waste
and die, no Action of Waste lieth a-
gainst his Executors or Administrators
for Waste done before their Time. T. L.
126.

If there be two Copartners of a Re-
version, and one of them die, the Aunt
and Niece shall join in an Action of
Waste. *Kitch.* 244.

If a Tenant for Life commit Waste,
and after surrender his Estate, and the
Lessor accepts it, the Lessee is then dis-
charged of the Waste.

If a Stranger commit Waste upon the Waste by a
Lands which one holdeth for Life or Stranger.
Years,

Years, the Tenant shall suffer for it, and is left to take his Remedy over against him that did it.

Landlord.

If a Landlord covenant to deliver Timber out of the same Land to repair the House let, and will not deliver it, and for Defect thereof the Tenant will not repair it, but suffers the House to fall down; this is Waste in the Tenant, and he is punishable for it.

But if the Timber be to be taken out of other Lands, and be not delivered, then the Tenant is excusable if he suffer the House to fall, and no Action of Waste lies against him. *T. L. 126.*

Single Woman.

If a single Woman rent Lands, and marries, and her Husband commits Waste and dies, she shall be punished for this Waste done by her Husband. *Kitch. 244.*

Husband and Wife.

But if a Lease be made to a Man and his Wife, and her Husband commits Waste and dies, in this Case the Wife shall not be punished for such Waste, unless she agree to the Estate.

If a Woman be Tenant for her Life, and marries, and her Husband commits Waste, and the Wife dieth, the Man is not punishable for this Waste: But if a Woman be possessed of a Term of Years, and takes a Husband who commits Waste, and the Wife dies; here the Man is liable to an Action of Waste, for the Waste by him committed, because

cause he enjoyeth the Term of the Lease.

Co. 1. par. Inst. 54.

If a Man make a Lease for Life or *Reversion* granted away Years, and after grants the Reversion *granted away* for Years, the Lessor shall have no Action of Waste during the Years; for he himself hath granted away the Reversion, in respect whereof he is to maintain his Action.

If an Action of Waste be brought, and the Term end while it is depending, yet the Writ shall not abate: For altho' the Plaintiff cannot recover the Place wasted, yet he shall recover the treble Damages.

Likewise if one be Tenant for Term *Recovery* of another's Life, and makes Waste, and afterwards the *Cestui que vie* dies, here the Lessor shall recover treble Damages, but cannot recover the Place wasted, for that falls to him by the Death of *Cestui que vie*. *Co. 1. par. Inst. 285.*

If Waste be done in one Corner of a Waste in part, Wood, that Place only which is wasted &c. shall be recovered: But if it be done here and there about the Wood, then the whole Wood shall be recovered, or as much wherein the Waste *sparsim* is done. *Co. 1. par. Inst. 54.*

And so in Houses, so many Rooms shall be recovered wherein there is Waste done. *Idem*

If a Man make Waste in cutting Trees which grow in Hedge-rows which inclose Pastures, nothing shall be recovered but the Place wasted; that is, the Circuit

Circuit of the Roots, and not the whole Pasture; but if Trees grow scatteringly about the Pasture, then the whole Pasture is forfeited if they be cut. *Præf.*

Reg. 343. sed Q.

It is a good Plea in Bar to a Writ of Waste to say, that the House fell by a sudden Tempest, although the Tenant did covenant to repair it, but it is no Plea in an Action of Covenant.

It is also a good Plea in a Writ of Waste to say, that the House was ruinous at the Time of the Lease making, and the Timber so putrified and rotten, that it fell. See *Brown's Waste*.

It is also a good Plea to say that the Plaintiff had entred upon the Land, before which Entry no Waste was made, or that he surrendered, and the Plaintiff did accept, before which Time no Waste was made. See 4 *Co. 11. 64. 5 Co. 119.*

But if a Tenant doth Waste, and afterwards surrenders, and the Lessor agrees, yet the Lessor may have an Action of Waste, and recover treble Damages. *Co. 1. per. Inst. 285.*

If an Action of Waste be brought by Husband and Wife in Remainder in special Tail, and the Wife dieth, (the Suit depending) without Issue; in this Case the Writ of Waste shall abate.

If

*To hold without
Impeachment
of Waste.*

If a Lease be made to hold to one without any Impeachment of Waste, then the Tenant may cut down Trees and convert them to his own Use; but if the Words be to hold without Impeachment for any Action of Waste; in this Case if the Lessee cut down Trees, the Lessor shall have them *Co. 1 par. Inst. 220.*

If a Tenant for Life grant a Rent *Rent-charge.* charge, and after doth Waste, and the Lessor recover in an Action of Waste, he shall hold the Land charged during the Life of the Tenant for Life; but if the Rent were granted after the Waste done, the Lessor shall then avoid the Grant made by the Tenant for Life. *Idem, 233,*

234.

If a Tenant in Fee release to his Tenant for Life all his Right, yet he shall have an Action of Waste. *Idem,*

345.

And if a Tenant in Tail make a Lease for his own Life, yet he shall have an Action of Waste.

*Release of
Right.*

But if there be a Tenant for Life, the Remainder to another in Tail, and he in the Remainder release to the Tenant for Life all his Right and Estate in the Land, he cannot afterwards have an Action for Waste.

If the Grantee of a Reversion bring an Action of Waste, the Lessee may
T plead

plead genetally that he hath nothing in the Reversion.

If a Lessee, before his Term begin, enter into the Lands let to him, and do an Act which amounteth unto Waste, the Lessor shall not have an Action of Waste for the same.

None shall have Judgment to recover in an Action of Waste, where the Waste comes but to 12 *d.* or such a small Sum. *T. L.* 131.

If Waste be done upon Lands let for Term of Years or Life, by one, against whom the Lessee can have no Remedy in Law for committing the same Waste, the Lessee in such Case is not punishable for the same by the Lessor, except there be a special Covenant in the Lease, that he shall not permit nor suffer Waste to be done. *Co. 2 part. Inst.* 303. See *Pract. Reg.* 343.

House uncovered at Entry.

If the House be uncovered when the Tenant cometh in, it is no Waste in the Tenant if he suffer it to fall down.

The raising of a new Frame of a House which was never covered is no Waste. If a House fall by sudden Tempest, or be burnt by Lightning, or destroy'd by Enemies, or the like, without any Default of the Tenant, or was ruinous at his coming in, and fall down; this is no Waste. *T. L.* 132. And

Tempest.

And the Tenant may build the same again with such Materials as remain, and with other Timber growing upon the Ground; but he must not make the House any larger than it was, for if he do, it is Waste.

If a Tenant fix a Furnace, and not ^{Furnace.} to the Walls nor Posts of the House, if he take it away within his Term, it is no Waste.

If a Tenant in Fee fix a Furnace in the Middle of the House, the Heir shall have it, and not the Executors.

If a House fall by a great Wind or Tempest, the Lessor shall have the Timber; for it is no Waste, and the Lessee is not bound to build it up again.

If I let Lands in which are Mines ^{Mines, &c.} or Trees, I cannot enter to take the Trees or Profits of the Mines, but am thereby a Trespasser, unless I reserve such a Privilege to my self when I let the Lands. 9 E. 4 f. 37. But I may enter into the Lands to see if any Waste be done, and am not a Trespasser, but may have an Action if I am opposed or disturbed in my View. 2 Cro. 478. *Landlords Law*, 163. where you may see much of these things.

T 2 Digging

Digging of Land by a particular Tenant is Waste. *Dyer* 361. *Litt. Rep.* 295. But not if it be for bettering the Ground. Yet if a Copyholder build a new House upon part of the Land, it has been adjudged a Forfeiture; for though the Land be bettered, yet it is in another Kind. *Id.* & 22 H. 6.

If a Lessee alter his House, and make it bigger, and take Timber to do it, it is Waste. *Litt. Rep.* 266. *Dyer* 361.

Hop-ground.

A Lessee of Land made it a Hop-ground, and it was adjudged Waste. *Litt. Rep. ibid.* Although one Acre now was better than three before; but it was in another Kind.

To pull down a House is Waste; but if the Tenant build it up again before an Action brought, he may plead that specially. 1 *Mod. Rep.* 94.

To pull down a Malt-Mill and build a Corn-Mill, is Waste. *Idem*, *Co. Litt.* 53. 1 *Roll.* 507. 2 *Roll.* 815.

If a House could not be repaired without pulling it down it must be pleaded specially. *Idem.* 1 *Mod. Rep.*

Waste in the House is Waste in the Curtilage, and Waste in the Hall is Waste in the whole House. *Idem.*

To convert a Brewhouse into Tenements is Waste also, although they be of greater Value. 1 *Lev.* 309.

Brew-house.

A Lease is made for Life, the Remainder over for Life, the Remainder over in Fee, the first Lessee maketh Waste; and because he in the Fee hath no Remedy by the Common Law, and Waste is a Wrong prohibited, he shall have Relief in *Chancery*. *Tenant's Equity. Law, 42*

If a Tenant makes Waste in cutting of Wood or Timber contrary to the Proviso's, Exceptions, or Covenants in his Lease; for such a Breach the Landlord may bring his Action of Covenant before the End of the Term. *Idem, 53.*

Waste is a Forfeiture, but if a Copyholder by Custom hath been fined, or removed it, that proves that 'tis no Forfeiture; for where the Law gives the Lord another Recompence, the Law will not make a Forfeiture, and a Lord may pursue a Copyholder with Amerciaments till he pluck up the Hedge. *Litt. Rep. 267.*

If a Fold-court is not due of common Right but of Custom, and there is Disturbance for it, 'tis no Forfeiture. *Litt. Rep. 267.*

Wilful denying of Services is a Forfeiture. *Idem, 295.*

And if a Copyholder convert Part of his Land into a Fishery, 'tis a Forfeiture. *Idem, 268.*

But if Tenant for Life of a Copyhold suffers a Recovery as Tenant in Fee-simple, this is no Forfeiture. 1 *Mod. Rep.* 199

And of all Forfeitures committed by Copyholders, the Lord only is to take Advantage.

Also if he in Remainder entereth upon a Tenant for Life of a Copyhold, and makes a Surrender, nothing passeth. 1 *Mod. Rep.* 199.

Note, An Admittance of Tenant for Years is an Admittance of him in Remainder. 1 *Vent.* 269. 1 *Mod* 102, 120. 4 *Co.* 23 3 *Cro.* 504.

Sole Feeding.

Custom for Copyholders to have sole Feeding in a certain Waste, it is not needful to alledge that the Beasts were levant and couchant *Vid.* 2.

Lev. 2. 67. Here also it's said Copyholders may licence others (without Deed) to put on their Beasts, and may exclude their Lord. 1 *Vent.* 165. 2 *Saund.* 326, 327 But if a Man claim only common Appurtenant or Part of the Herbage, he must not say for his Cattel levant and couchant, and *fo.* 328. says, The Licence ought to be by Deed.

Licence.

In what Cases, and when the Lord shall seize the Copyhold Estate of his Tenant for Felony or Treason, see 2 *Vent.* 38.

Land

Lands do not appear to be Copyhold by saying they were held according to Custom, unless it be laid at the Will of the Lord. *Idem*, 144.

A Remainder limited to one for the Life of a Tenant for Life may be good by way of Remainder, because a Tenant for Life may forfeit by alienating in Fee, and then he in Remainder may enter and enjoy, but this Reason holds not in Copyholds; for if a Tenant for Life of a Copyhold commit a Forfeiture of his Estate, the Lord of the Manor shall take Advantage of a Forfeiture by Tenant for Life of a Copyhold, and not he that hath the Remainder or Reversion. 1 *Saund* 151.

Also a Lord may grant Copyhold forfeited before Seizure. 1 *Lev.* 26. *Grant before Seizure.*

Bnt Strode versus *Dennison*. 3 *Lev.* 94. Copyholder for Life was attained of Felony, and adjudged that he in Reversion might take Advantage and enter; for the Estate for Life was determined by the Attainder, although it appeared the Felony was pardoned.

No Forfeiture of a *felo de se* happens before an Inquisition is taken and returned. *Saund*. 275. *d.* 262.

The Husband takes Copyhold Lands of the Lord, to whom the Lord grants the Seisin to hold to the Husband and Wife; 'tis a good Grant to the Wife,

T 4 although

Remainder for Life of Tenant for Life.

Grant before Seizure.

Husband and Wife.

although she is not named till after the
Habendum 1 *Saund* 151.

A Lord without a Custom may
seize the Land until the Tenant comes
in to be admitted, but cannot seize
them as forfeited without a Custom.
1 *Lev* 63.

*Surrender by
him in Remain-
der.*

If he in Remainder of a Copyhold
surrender his Remainder for the Use
of the Tenant for Life, and after his
Decease to the Use of himself and
his Wife, the Estate limited to the
Tenant for Life is void; but the E-
state limited to the Husband and
Wife good by the way of a present
Estate, but not by way of a Remain-
der 1 *Saund* 150, 151, 152.

But a Surrender of a Copyhold in
Fee from the Time of his Death is void.
Idem, 151.

Clergy allow'd.

A Copyholder convicted of Felony
had Clergy allowed before Attainder,
and the Court were of Opinion that
'twas no Forfeiture without a special
Custom. 1 *Lev* 263.

If a Covenant or Agreement be to
surrender a Copyhold to the Use of
A then a Surrender into the Hands of
two Copyholders, according to the Cu-
stom, is sufficient 1 *Lev* 293.

Admittance to a particular Estate is
Admittance to the Remainder; and no
Fine ought to be paid for Admittance to
a Remainder without special Custom,
and a Refusal to pay a Fine upon a rea-
sonable

*No Fine pay-
able.*

sonable Doubt of the Custom, is not a Forfeiture. 3 *Lev.* 308.

Burrough-English, &c.

Copyhold Land of the Tenure of Burrough-English surrendered to the Use of another Person and his Heirs, who dies before Admittance, the Right shall descend to the youngest Son. 1 *Mod. Rep.* 102. 3 *Keb.* 263. 4 *Co.* 22. *b.*

Grant of Burrough-English Lands to one and his Heirs for three Lives, the younger Son shall be Heir. 2 *Lev.* 138. Otherwise in Gavelkind of Rent granted out of it, it shall go amongst all, as the Land should *Idem*, 87. *Gavelkind.*

A Rent *de novo* granted out of Gavelkind Land shall descend according to the Descent of Land. 1 *Mod. Rep.* 96, *&c.*

If a Copyholder for Life surrender to the Use of another who is admitted, by this the first Copyholder's Estate is clearly determined; but if Copyholder in Fee surrender to the Use of another for Life, after his Death he shall have it again. *King* and *Lord's Case*. H. 5 *Car.* 1. B. R. *Rot.* 793. *Cro.* 1. *par.* 148. *L. L.* 74.

If an Infant surrender Copyhold Land to another who is admitted, this is not good to bar the Infant, for he may enter at his full Age. *Goole's* and *Grane's Case*. *Moore's Rep.* L. L. 75. *Infants surrender.*

If

Husband surrenders.

If a Woman Copyholder take an Husband who surrenders, this shall be no Discontinuance to the Wife nor her Heirs. 35 *Eliz. Bullock and Dibley's Case.* 4. *Co. Rep.* 23. *L. L. ibid.*

Where Descendant takes not away the Entry.

The Lord of a Manor seized a Copyhold without Cause, and granted it to another in Fee, the Grantee died and his Heir was admitted; then the first Copyholder died and his Heir entered upon the Heir of the Grantee, and surrendered to the Use of a Stranger; and here the Heir's Entry before admission was adjudged lawful, and his Surrender to the Use of a Stranger good; and it was resolved that the Descent of a Copyholder doth not toll or take away the Entry of another Copyholder who hath Right. *Cro. 2 part* 36. and *vide Co. 4. Rep. f. 23. L. L. 75.*

Where acceptance of Rent barreth not Entry.

If a Copyholder commit Waste, whereby a Forfeiture accrueeth to the Lord who afterwards accepteth of Rent; this doth not bar the Lord, but he may enter for the Forfeiture of the Tenant notwithstanding the Acceptance of the Rent. *M. 29 Eliz. in B. R. Godbole* 47. *L. L. 97.*

Surrender no dispensation of a Forfeiture.

If a Copyholder forfeit his Estate, and then surrenders to the Lord who accepts it, not knowing of the Forfeiture; yet this is no Dispensation of the Forfeiture. *Hil. 4 Car. 1. Rot. 496. B. R. Matthews and Whetton's Case, Cro. 1. par.* 169. *L. L. ibid.*

A Copyholder in Fee took a Lease for Years of a Manor; resolved the Copyhold was extinct for ever, and not only during the Lease. *Hide and Newport's Case, Moore's Rep.*

If a Feme Copyholder in Fee take an Husband, who makes a Lease for Years contrary to the Custom; after the Husband's Death this Forfeiture shall not bind the Feme and her Heirs, but she shall have it again after her Husband's Death, *non obstante* the Forfeiture, and so it was adjudged, *inter Savern and Smith in the Exchequer. Cro. Rep. 1 par. 7. Pasc. 1 Car. 1. L. L. 149.*

A Copyholder in Fee surrendered to the Lord of the Manor his Copyhold Estate, and the Lord made a Lease for Years of the Manor and of the Copyhold by the Name of his Tenement called *H.* and whether by this the Copyhold was determined or no, was the

Question: And it was held that it was not; because when the Lord let the Manor, it was included as Parcel thereof; but if he made a Lease for Years of the Copyhold by it self, that had destroyed the Copyhold: For it was then during that Time severed from the Manor, and so could never again be demisable by Copy. *M. 14 Car. 1. in B. R. Lee and Bootbly's Case. Cro. 1 par. 50. 375. L. L. 118.*

If

Copyhold extinct.

Surrender by Copyholder in Fee, to the Lord, who afterwards leased for Years.

Severance by a Lease for Years.

Where Copyholder leases for Years.

If a Copyholder make a Lease for Years, which is a Forfeiture at the Common Law, and after the Lord makes a Feoffment, or a Lease for Years of the Freehold of this Copyhold, in this Case the Feoffee or Lessee of the Lord shall not take Advantage of the Forfeiture; for the Lease of the Freehold made by the Lord before Entry is an Assent that the Lessee of the Copyholder shall continue his Estate, and so it is in Nature of an Affirmance and Confirmation of the Lease. *M. 40 El. in C. B. Penn and Mericall's Case. Owen's Rep. fo. 63. L. L.*

157.

Dominus pro Tempore may regrant a Copyhold that escheats.

Every one who hath a lawful Estate or Interest in a Manor, be it in Fee-simple, Fee-tail, Dower, Tenant by the Courtesie, Tenant for Life, Tenant for Years, Guardian, Tenant by Statute Merchant, Staple, or *Elegit*, Tenant at Will and Sufferance; if a Copyhold escheat or come into their Hands during the Time, they may regrant it, and it shall bind the Lord, because every one of them is *Dominus pro tempore*. *Co. Litt. 58. Co. 4 Rep. 23. Owen's Rep 28, 29. L. L. 157.*

Copyhold determined.

If a Copyholder accept of a Lease for Years of his Copyhold, by this his Copyhold Estate is determined. *29 Eliz. Lane's Case, Co. 2 Rep. 16. L. L. ibid.*

No warrsons-ble or ex-cessive Fines.

If the Fine of Copyholders of a Manor upon Admittance be incertain. yet the Lord cannot demand or exact unreasonable

reasonable and excessive Fines; and if he do, the Copyholder may by the Law deny to pay them, and it is no Forfeiture, and it shall be determined before the Judges, upon Proof of the Value of the Land, what Fine was reasonable to be demanded; for if it should be otherwise, great part of the Copyhold should be destroyed at the Will of the Lord, by exacting unreasonable Fines. *Co. 4. Rep. 27. Latch's Rep. f. 14. acc. L. L. 159.*

If the Lord assesses a reasonable Fine, and require the Copyholder to pay it, he is not bound to pay it presently, because he could not know what the Lord would assess, & *nemo tenetur divinare*; and he shall therefore have reasonable Time to pay it in, if the Lord limits no Time; but it is otherwise of a Fine certain. *Co. 4. Rep. f. 27. L. L. ibid.*

Note, That no Fine is due to the Lord, either upon Surrender or Descent until Admittance, for that is the Cause of the Fine; and if after the Tenant deny to pay it (if it be a reasonable Fine) it is a Forfeiture of his Copyhold. *Bacon and Flatman's Case*, and *Sands's Case* so resolved. *Vid. Co. 4. Rep. f. 28. L. L. 159.*

If a Copyholder come not to do his Services, although he were often demanded to do them, but still puts off from Time to Time to do them, although he do not absolutely refuse, yet this Deferring is a Forfeiture. *Pasc. 2 Car. 1. in*

*Reasonable
Time to pay the
Fine.*

*No Fine due
until Admittance.*

*Deferring of
Services is a
Forfeiture.*

*One Year and a
 half of impro-
 ved Rent ad-
 judged a suf-
 ficient Fine.*

The Lord of a Manor assessed two Years and a half Value of the Land according to the racked Rent for a Fine upon the Grant of a Copyhold, and for Non payment thereof entered for a Forfeiture: And it was held by the Court of *King's Bench*, that the Fine was unreasonable, and that one Year and an half of improved Rent was high enough; and therefore the Lord's Entry for the Forfeiture was adjudged unlawful: *Hill. 5 Car. 1. in B. R. Dove and Golding's Case, Cro. 1. par. 142. L. L. ibid.*

*Forfeiture for
 not coming at
 the day assigned
 to tender a
 Fine certain.*

The Lord assessed a Fine of twelve Pounds to be paid by a Copyholder, and appoints it to be paid at his capital Messuage of the Manor three Months after, and the Copyholder pretending the Fine to be certain (that is to say, two Years Quit-Rent) offered the same at the Day of assessing the other Fine; but at the appointed Place for the Payment thereof cometh not thither to excuse his Non-payment, nor makes any other Refusal; and it was held to be a Forfeiture of his Copyhold: But if he had come at the Day assigned him for the Payment, and had then tendred the two Years Payment Quit-Rent, being the Fine certain according to the Custom, though not assess'd nor demanded by the Lord, it had not been a Forfeiture. *2 Cro. 617. Latch's Rep. 122. L. L. 161.*

Of

Of Rescous, Replevin, Accowry.

In the Sense of the Law *Rescous* is a taking away and setting again at Liberty Goods distrained, or the Body of a Person arrested, and in an Officer's Custody, by Virtue of legal Procefs. *Co. 1. Inst.* 160.

As to the first of these,

If a Landlord distrain when there is *Where the Tenant may make a Rescous.* no Rent due, the Tenant may make a *Rescue*, and hinder that Distress. *Co. Rescous.* 4. 11. *T. L.* 110, 197.

In like manner, if a Landlord is come to distrain, and the Tenant tender his Rent unto him, and the Lord will distrain notwithstanding; in this Case the Tenant may make *Rescous.* *Co. 1. par. Inst.* 160. *T. L.* and *L. L. ibid.*

If Rent be in Arrear, and the Lord distrain the Tenant's Cattle in the Highway within his Fee; here also the Tenant may rescue them; for no *In the Highway.* Man may distrain in the Highway way. but the King and his Officers by special Authority. *Co. ibid. Magna Charta, 25.*

In like manner, if a Landlord distrain *Averia Caruceæ*, Goods of the *Averia Caruceæ.* Plough, where there is a sufficient Distress to be taken besides; or if the Lord distrain any thing that is not distrainable by Common Law or Statute; in this Case it is lawful for the Tenant to

to make *Rescue*. *Rastal Tit. Distress*, 10. T. L. 110. L. L. 198.

*Tenant drives
the Cattle out
of the Fee.*

But if a Lord come to distrain Cattle which he seeth within his Fee, and the Tenant, or any others, to prevent the Distress, drive the Cattle out of the Fee, the Lord may follow them with fresh Suit and distrain the Cattle, and the Tenant cannot justify a *Rescous* of them; because in the Judgment of the Law the Distress is taken within his Fee. *Hugh's Grand Assize. 1 par. p. 117. c. 21.*

But if the Lord be coming to distrain, and have not Sight of the Cattle within his Fee, though the Tenant drive them off on Purpose, or if the Cattle after the View go out of the Fee of their own Accord, or if the Tenant after the View removeth them for any other Cause than to prevent the Distress; then if the Lord distrain them out of his Fee, the Tenant may justify a *Rescue*. Co. 1. par. Inst. 161. T. L. 111. L. L. 198, 199.

*Cattle go out of
their own Ac-
cord.*

If the Rent be behind, and the Lord distrain the Cattle in the Highway within his Fee, the Tenant may make *Rescous* (except it be in the Case aforesaid, upon the Tenant's driving out after View) for no Man may distrain in the Highway, except the King and his Officers having special Authority. Co. Litt. f. 160. b. and Co. 2. L. L. 199.

*Within his
Fee.*

If the Lord distrain out of his Fee Out of his Fee. In Lands not holden of him, the Tenant may make *Rescous*, unless in the Cases aforesaid. Co. Lit. fo. 161. a. L. L. *ibid.*

If *Rescous* be returned without shewing in the Place where *Rescous* was made, it is void. Abr. Moore's Rep. 112. Pl.

562

If a Man come to distrain Cattle For Damage-*feasant*, for doing Damage, *feasant*. and see the Beasts in his Ground, and the Owner of the Cattle drives them out before the Distress taken; the Owner of the Ground cannot follow and take them; for if he do, the Owner of the Cattle may *rescue* them, for they must be *Damage-feasant*; that is, doing Hurt at the time of the Distress taken; and the Owner of the Ground may bring his Action of Trespass. Co. *ibid.* T. L. 112, 113.

The Lord cannot break open any Gate that is locked, nor break open any Inclosure to take a Distress; so that if a Tenant lock up his Gates and inclose his Ground, so that the Lord cannot come to distrain; if the Rent be behind, and the Lord have had a &ual Possession; this is a Deseisin. Co. *ibid.* T. L. 112. L. L. 200.

Disseisin by locking up Gates, &c.

Now for the Ease and speedy Remedy of the Country in case of Distresses, where the Cattle be pounded, the Statute hath provided, That every Sheriff

Replevin. 1 & 2 Ph & M. ch. 12. §. 3.

at

U

If

at the first County-Day, or within two Months after he first receives his Patent, is to depute and proclaim in his Shire-Town four Deputies to make Replevins within his County, which must reside within twelve Miles one of another, on Pain of five Pounds a Month for every Month they are wanting. *L. 204. T. L. 112,*

*Four Deputies
to the Sheriff.*

So that when any Man's Goods are distrained or impounded, he may repair to one of the Sheriff's Deputies for that Purpose, and there he may have a Replevin (upon *Plegii de Retorn. habend. s. &c.*) to cause the Goods distrained to be delivered to the Owner. *T. L. 112, 113.*

*Plegii de
Retorn. habend.*

There is likewise a Writ de *Replegiari facias* at the Common Law, whereby the Sheriff is commanded, taking Pledges of Prosecuting, to redeliver the Goods distrained to the Owner; but since the other is the readier and easier Way, this Writ is not much used. *T. L. 113. L. 201.*

*Tenant Plain-
tiff.*

In a Replevin, he whose Goods are distrained or impounded becomes the Plaintiff, and declares against the other for unjustly taking and detaining his Goods or Cattle, *contra vad. & pleg. &c. ibid.*

If a Landlord distrain and carry the Distress to Hold, or out of the County, so that the Sheriff upon a Replevin

Replevin cannot redeliver the Goods; then upon the Sheriff's Return of the Replevin, the Tenant may have a Writ of *Witbernem*, directed to the Sheriff, to take as many of the Lord's Beasts, or as much Goods in his Keeping, till he have made Deliverance of the first Distress; and if the Goods or Cattle be convey'd to a Fort or Castle, the Sheriff may command the Power of the County, and beat it down. *L. L. 205, tit. 206. T. L. 113.*

When a Distress is taken and impounded within a Franchise or Liberty that hath Return of Writs, whether the Matter be before the Sheriff by Writ or by Complaint, he ought to make a Warrant to the Bailiff of the Liberty to make Deliverance; and if he make no Answer, or return that he will make no Deliverance, or the like, then the Sheriff by force of the Statute of *Marlebridge*, chap. 21. and *Westm. 1. Where the Sheriff's may enter*, chap. 17. may enter into the Liberty, and make Deliverance; and if the Distress were taken without the Liberty, and impounded within the Liberty, then the Sheriff may enter and make Deliverance, and need not first to make a Warrant to the Bailiff of the Liberty. *Co. 2. par. Inst. f. 140, and 194 T. L. 114. L. L. 205.*

*Property
claim'd by
Defendant, &c.*

The Plaintiff in the Replevin ought to have the Property of the Goods in him at the Time of the Distress made; for if the Defendant claim Property, the Sheriff cannot replevy the Distress, but the Property must be try'd by Writ.

So that if the Defendant claim Property in the Goods distrained, then must the Plaintiff in the Replevin have a Writ *de Proprietate probanda*, directed to the Sheriff to try the Property; and if the Jury find for the Plaintiff, then the Sheriff must make a Deliverance for the Distress; and if it pass for the Defendant, the Sheriff can proceed no further unless the Plaintiff bring a Writ of *Replegiari facias*, directed to the Sheriff; and then though he do return the Property, yet it shall proceed to Trial in the *Common Pleas*, upon the Issue of the Property. *Co. 1. par. Inst. 145. L. L. 209, 210. T. L. 114.*

Property tried.

*Two Kinds of
Properties.*

Note, There are two Kinds of Properties; that is, a general Property which every absolute Owner hath; and a special Property, as of Goods pledged or taken to manure one's Lands, or the like; and of both of these a Replevin doth lie. *Co. Litt. 145. b. L. L. 210.*

But a Man cannot claim Property by his Bailiff or Servant.

The

The Defendant in a Replevin; that is, he that made the Distress, may, if he see Cause, bring a Writ of *Recordare*, and so remove the Plaintiff upon the Replevin, out of the Sheriff's County-Court into the *Common Pleas*; and if the Plaintiff declare not, he may have a *Retorn. habend.* And then if he declare not, a Writ to enquire of Damages. *Co. Inst.* 2. 339. *L. L.* 207. *T. L.* 115.

If a Man by his Deed grant a Rent with a Clause of Distress, and grant further, that he shall keep the Goods distrained against Sureties and Pledges till the Rent be paid, this Grant is not good, but the Sheriff may replevy the Goods distrained notwithstanding; for if such a Distress should be irrepleviable, the Current of Replevins should be stopped, to the great Damage of the Subject. *T. L.* 115. *L. L.* 207

If the Goods or Cattle of several Men be distrained, they cannot join in a Replevin, but every Man must have a several Replevin; for in a Replevin it is a good Plea to say, the Property is to the Plaintiff, and to a Stranger; and where there be two Plaintiffs, that the Property is to one of them. *Co. 1. par. Inst.* 145. *L. L.* 208. *T. L.* 115.

U 3

If

If a Mantake a Distress in one County and drive it into another, the Owner of the Cattle may sue a Replevin in which County he pleases. *Compl. Attor.* 131. *L. L.* 208.

*Baron and
Feme.*

If the Cattle of a Feme sole be taken, and afterwards she taketh an Husband, now he alone may sue a Replevin. *Com. Attor.* 131. *L. L. ibid.*

In a Replevin, if it be of two Cattle, one living and the other dead, the living shall be first demanded. *Finch L. 1. c. 3. p. 25. L. L.* 209.

*Place to be
mentioned.*

If the Plaintiff in a Replevin do not set out the Place where the Distress is taken, as well as the Town, his Declaration will be naught; and the Avowant may overthrow him upon a Demurrer. *Read and Hawke's Case. Hobart's Rep.* 16. *L. L. ibid.*

*Replevin after
they come back.*

If a Lord distrain his Tenant wrongfully, although the Cattle be come back again to the Owner, yet the Tenant may have a Replevin against the Lord, because he cannot have an Action of Trespas against him. *Finch L. 1. c. 3. p. 46. L. L.* 209. *L. L.* 116.

*Number and
Kinds of the
Cattle.*

The Plaintiff in a Replevin ought to be careful in giving his Instructions for it, for it must be certain in setting down the Number and Kinds of the Cattle which are distrained; otherwise the Replevin is not good.

*Recovery by
Defendant.*

The Avowant is the Defendant in a Replevin; that is, he that made the Distress;

stress; and when he justifies in his Plea for what Cause he distrained, that Plea is called his Avowry. *L. L. 209. T. L. 116.*

As if a Landlord distrains for Rent in Arrear, and the Tenant or Owner of the Cattle brings a Replevin, and declares against him, for unjustly taking and detaining his Cattle, and the Defendant justifies he took it in his own Right, and so sheweth the Cause of the taking in his Plea: This is an Avowry.

Avowry in his own Right.

But if the Defendant took the Distress for or in the Right of another; then when he hath shewed the Cause in his Plea, he must make Conuzance or Acknowledgment of the taking the Distress, as being Bailiff or Servant unto him in whose Right he took it. *T. L. 116, 117.*

Consequence as Bailiff, &c.

There are four Manners of Avowries which a Lord may make upon a Replevin.

1. Avowry upon his very Tenant. *Co. 4 Kind of Avowries. l. 9. f. 135, 136.*

2. Upon his very Tenant by the Manner where the Tenant had but a particular Estate.

3. Upon his Tenant by the Manner where the Lord had but a particular Estate; and these three are Avowries at the Common Law.

4. The Lord may avow upon the matter in the Land, as within his Fee; this

*Interventions
not prevented
by Stat. 21.
H. 8.*

this is provided by the Statute of 21 H. 8. c. 19. and is the safest Way for the Benefit of the Lords; for by this Statute a Lord may avow the taking a Distress, as in Lands holden of him within his Fee, without Naming of the Person in Certain; which by the Common Law they could not do, but were thereby compelled to avow upon a Person in Certain, which often prov'd much to their Damage and Prejudice; for by the secret Fines, Recoveries, Grants, and Conveyances, which the Tenants used purposely to frame to defraud their Lords, they were ignorant upon whom to make their legal Avowry; which Inconveniencies the forementioned Statute hath prevented. *T. L. 117.*

Now in an Avowry upon this Statute, the Plaintiff in the Replevin, be he Tenant for Years or otherwise, may have every sufficient Answer and Aid, and every other Advantage in the Law, to the Avowry; Disclaims only excepted; for, because the Avowry is made upon no certain Person, he cannot disclaim. *Idem 118.*

And if such Plaintiffs be nonsuited or barr'd, or overthrown by the Avowry, then the Defendant or Avowant shall recover Costs and Damages against the Plaintiff, as the Plaintiff should have done if he had recovered

Costs and Damages for the Defendant.

ed in the Replevin, against the Avowant.

If an Avowry is made for Rent, and it appears by the Party's own shewing, that Part of it is not yet due; yet the Avowry may be good for the Residue. 1 *Saund.* 285.

But if it appears that an Avowant has Title only to two Parts of the Rent, for which he avows, the whole Avowry shall abate. *Idem*, 286.

Also in an Avowry for Rent, and *Nemine pane* together, without alledging any Demand of Rent; the Avowry is good for the Rent, although it is ill for the Penalty. *Ibid.*

Avowry for Rent due at a latter Day, is not a Bar in Avowry for Rent due at a former Day; neither is a Recovery in Debt for Rent due at a latter Day, a Bar in Debt for Rent due at a former Day, as an Acquittance is. 1 *Lew.* 43.

In Replevin the Defendant pleaded, they were the Beasts of a Stranger; whereupon the Plaintiff demurred, because it was only a Plea in Abatement: The Court said, it was good either in Bar or Abatement; and that there needed no Avowry for a Return, because the Beasts being not the Plaintiff's, the Avowant is to have the Return; and Judgment was given for the Defendant. 2 *Lew.* 92. See the *General Abridgment*. Tit. *Avowry*. And see

That they were the Beasts of a Stranger, God Bar.

see after upon the Oxford Act, and the late Act for Amendment of the Law.

Vid. Appendix Of Distresses, what Things may be distrained, and how used; also who may take a Distress, for what Cause, when and where; together with a late Act of Distress for Rent.

Distress for Rent.

Next we are to enquire how, and for what Distresses may be taken and kept; wherein it is to be observ'd.

That if Rent be in Arrear, and unpaid, the Landlord may take a lawful Distress; and that he shall put in Pound Overt, there to remain until he be satisfied of what he distrained for. *T. L. 95.*

Put in Pound Overt.

So that if a Landlord distrain the Cattle for Rent, and put them in a Pound Overt, and the Beasts die there for Lack of Meat, it is at the Peril of him that own'd the Beasts, and not of him that distrained; for in him that distrained there can be assigned no Default, but the Default was in the other, because the Rent was unpaid. *Dr. & Stud. l. i. c. 5. p. 10.* See after.

Cattle dying there for Lack of Meat.

Of what Distress may be.

Now a Distress must be made of such a Thing wherein some Body hath a certain and valuable Property; therefore such Things as are *Feræ Naturæ*, cannot be distrained; neither can any

one distrain a Horse if any Body be on the Back of him; nor any thing which a Man holds in his Hand, or carrieth about him annexed to his Body. *T. L. 96.*

And although the Law be, that a General Rule Landlord may distrain any thing that he finds Levant or Couchant upon the Premises for his Rent behind, whose Goods or Chattels soever it be, and may detain the same until his Rent be satisfied; yet this general Rule hath some Restriction and Limitation; for there are several Things whereof a Distress cannot be taken. *T. L. Ibid.*

Such Things as are for the Maintenance and Benefit of Trades cannot be distrained for the Rent; as a Horse in a Smith's Shop; nor an Horse in an Inn cannot be distrained for the Rent thereof; nor the Materials in a Weaver's Shop, nor for the making of Cloth; nor Cloth or Garments in a Taylor's Shop; nor Sacks of Corn, nor Meal in a Mill for the Rent thereof; nor any thing that the Tenant hath distrained for *Damage-feasant*; for that is in the Custody of the Law. *Co. Lit. 47. Noy's Max. 43, 44. Terms of the Law. Tit. Distress. T. L. 96. L. L. 178, &c.*

Likewise Oxen of the Plough may not be distrained; nor a Mill-Stone, tho' it be raised to be picked, so long as it lies upon the other Stone.

Neither

Sheep.

Neither may a Distress be taken of Sheep, if there be a sufficient Distress besides.

Cart and Horses.

Neither can a Man sever Horses joined together, or to a Cart. 1 *Vent.* 36. But he ought to have distrained Cart and all, according to the Book of 20 *Ed.* 4. 3.

Distress of a Cart loaden with Corn, and four Horses to it, adjudged not to be excessive, because he could not sever the Horses. *Vid.* 3 *Cro.* 7. 2 *Vent.* 183.

Common Rule.

And the common Ground is, That a Distress must be taken so as it may be returned in the same Plight. 1 *Inst.* 47. a. *Vid.* 1 *Sid.* 422, 440. 2 *Keb.* 529, 595. 1 *Roll.* 667. n. 22. *Roll.* 270. 3 *Cro.* 783.

Viſuals and Corn.

Likewise Viſuals, or Sheaves, or Shocks of Corn cannot be distrained; but Carts or Waggon's loaded with Corn may be distrained either for Rent or Damage-feasant. *Co. Litt.* 48. L. L. 179, 180. But see after the late Act of Parliament.

Tools.

No Man's Tools wherewith he works at his Trade shall be distrained, as the Carpenter's Ax, or a Scholar's Books, &c. *Co. ibid.*

Things fixed to the Freehold.

Neither can any Thing which is fixed to the Freehold be distrained, as Furnaces, Coppers, or Fats fixed for Dyers or Brewers, (although the Tenant may remove them during the Term) nor the Windows

Windows or Doors of a House, while they are upon the Hinges. But if they be removed off from the Hinges they may be distrained. *T. L. 97. L. L. 180.*

The Landlord cannot distrain Tables dormant in the House of his Tenant, nor any thing which cannot be attached in an Affize; neither can any thing be distrained of which the Sheriff cannot make a Replevin, or that cannot be restored again in as good a condition as it was when it was distrained. *T. L. 98. L. L. 181.*

But a Man may distrain the Beasts of a Stranger (that come by Escape) for Rent, tho' they have not been levanted and couchant upon the Ground, according to *Coke 1 par. Inst. f. 47. L. L. 181.*

The Lord of a *Leet* may sell a Distress taken for an Amerciament in his *Leet*, as the King may sell a Distress, because it is in the King's Court. *L. L. 182.*

But note, a Court-*Leet* can amerce for nothing but only publick Nuisances and not for particular Trespas or Damage to the Lord, or any other, *1 Saund. 135.* See after. And see the *General Abridgement Tit. Amerciament.*

If a Man distrain Goods or Chattels he may put them where he will, either in a Pound *Covert* or *Overt*; but if they take any Harm he must answer for them. *Dr. & Stud. l. 2. c. 27.*

If

Living Cattle.

If they be living Cattle they ought to be put in a common Pound, or else in some open place, as in his own Yard or Close, that distrained them, or in some others by his Consent; so that the Owner may come lawfully to feed them: And the Owner of the Cattle must have Notice where they are, if they be not in a common Pound; and then if they die for Want of Meat, it is the Owner's Fault (as it is said before) but if they be in a Pound Covert, or out of the County, and die for Want of Meat, then he that distrained them shall make Satisfaction for them. *T. L. 99. L. L. 182.*

Notice to the Owner.

Cattle taken *damage-feasant* may be impounded in the same Pound where they are *damage-feasant*; but Goods or Cattle taken for other things may not. *L. L. ibid.*

Driving Distrained out of the County.

No Man ought to drive a Distrained out of the County where it is taken, nor out of the Hundred, but to a Pound Overt within three Miles; neither may a Distrained be impounded in several places, nor above four Pence taken for the Fees of impounding one whole Distrained on Pain of five Pound. *Co. 1 per. Inst. p. 57. Rastal. tit. Distrains, 11. Wingat. Abridg. p. 133. L. L. 183.*

Penalty.

If a Man distrain Beasts *damage-feasant* and put them in the Pound Overt, within the same County, not above

above three Miles out of the Hundred, and the Owner suffer the Beasts to die for Lack of Meat, the Loss is ^{Beasts perishing through} his own, and he that distrained them may be at Liberty to bring his Action for the Trespass, if he will; and if it be not a lawful Pound, then it is at the Peril of him that distrained them; and so it is if he drive them out of the Shire, and they die there. *Dr. & Stud. l. 1. c. 27. L. L. 184. T. L. 100.*

If the Owner of the Cattle tender ^{Amends tender} Amends to him that distrained, and he refuse it, yet the Owner may not take his Cattle out of the Pound; for he may not be his own Judge; and if he do, a Writ *de parco fracto*, for breaking the Pound, lieth against him; ^{Replevin.} but he must sue a Replevin to have his Cattle delivered him out of the Pound, and afterwards plead his Tender of Amends, of which the Jury must end the Controversy; also the Owner must look to give them Meat. *Dr. & Stud. ibid. L. L. See after.*

But if the Owner of the Cattle procure a Replevin to deliver them, and ^{Refusans upon a Replevin.} he that distrained them resist it, and will not deliver them; in this Case, if they die after for Want of Meat, it is at the Peril of him that distrained, and the Owner shall recover Damages against him in an Action ^{Damages.} upon the Statute for not obeying the King's

King's Writ. *Dr. & Stud. ibid. L. L. 186. T. L. 101.*

*Pound-break-
ing.*

If I send my Servant to take a Distress for a Rent or Service, who puts it in the Pound; if the Owner of the Beasts, or a Stranger take them out, I shall have an Action *de parco fracto*, for breaking of the Pound. See before. *L. L. and T. L. ibid.*

*Cattle im-
pounded in the
Close of a third
Person.*

And if one distrain Cattle, and pound them in another Man's Close with his Consent, and the Owner of the Cattle come and take them out; in this Case he that made the Distress shall have his Action for Pound-breach, and the Owner of the Close an Action of Trespass for breaking of his Close, *T. L. and L. L. ibid.*

If a Man break the Pound and take out my Goods, he that distrained may have a *Parco fracto* against the Party, and may also take the Goods again wheresoever he finds them, and put them in the Pound again. *Co. Litt. fo. 47. b. Comp. Attor. 192. L. L. 193.*

*Two Distresses
for one Rent,
not good.*

A Man distrained for ten Pounds due at *Michaelmas* for Rent, Goods which were not of the Value of forty Shillings, and afterwards distrained for the Rent due; and it was adjudged that he could not avow, for the Distress is not good, and it was his Folly that would not take a sufficient Distress at first; but if a Man be behind of his Rent at several Days,

Days, and the Lessor take a Distress for one Day at one Time, and for another Day at another Time; this is good. *Moore's Rep. pl. 26.* But see after Stat. 17. Car. 2. made at *Oxford*, whereby a second Distress is given for the Residue.

If the Lord distrain the Cattle of his Tenant, although nothing be behind, the Tenant for the Respect and Duty which he owed to the Lord, and which belongeth to him, shall not have an Action of Trespas against him *Vs & Armis*; though he may make Rescue. But if the Lord command his Bailiff in such Case to distrain where nothing is behind, the Tenant shall have an Action of Trespas *Vs & Armis* against the Bailiff. *Hughes's Grand Abr. 1 par. p. 311. c. 7. Co. 4. Rep. f. 11. L. L. 194.*

It there be Lord and Tenant by Distress in Tenant's House. Rent or other Service; if the Rent be behind, the Lord may enter into the Tenant's House, if the Door be open, and distrain for the Rent or Service, notwithstanding that the Tenant holdeth Lands in which he may distrain. *38 H. 6. cb. 28. Co. 5. Rep. fo. 92. and see 33 E. 3. Avowry, 256. L. L. 194.*

If a Man seised of Lands in Fee, maketh a Lease for Life thereof, and afterwards he granteth a Rent-charge; tho' the Grantee cannot distrain the Cattle of a Stranger, who is in Possession of the Land for the Rent, yet if the Grantor's

Cattle

X

Grantee of a
Rent-charge.

Cattle come upon the Land he may then distrain them for the Rent. *Brownl. 1. par. f. 32. L. L. ibid.*

*Upon excessive
Distress.*

The Statute of *Marlebridge, Chap. 4.* forbids the Lord to take excessive Distresses upon his Tenant, for Rent or Services, on Pain of being grievously amerced. As for Example; If the Lord distrain two or three Oxen for twelve Pence, or the like small Sum, and the Owner brings a Replevy of the Oxen, and then the Lord avow the taking of them for twelve Pence; here of his own shewing he shall make Fine, &c. or the Party grieved may have his Action upon the Statute. *F. N. B. 89. 8 H. 4. 16. 11 H. 2. 2. Regist. 97. Co. 2. par. Inst. fo. 107.*

*The Lord a-
merced.*

If the Lord distrain an Ox or an Horse for a Penny, if there were no other Distress upon the Land holden, then this Distress is not excessive; but if there were a Swine or Calf, &c. then the taking of the Ox or Horse is excessive, because he might have taken a Beast of less Value. *Co. 2. par. Inst. fo. 107. See Landlords Law, 187.*

*Distress for a
Penny, &c.*

There be certain Cases where a Man may distrain of Common Right, and where not of Common Right; a Man may distrain for Rent-service, Homage, Fealty, Efcuage, Suit of Court, or for Rent reserved upon a Gift in Tail, Lease for Life, Years, or at Will, though there be no Clause of

*Distress of
Common Right.*

of Distress in the Lease; because these are of Common Right. Co. l. par. l. 188. f. 204, 205. L. L. 188. T. L. 101.

But for Debt, Accompt, Trespass, or for Reparations, or the like a Man cannot distrain; neither can any Distress be taken for any Services which are not certain, nor can be reduced or brought into a Certainty. And upon an Assize for Damages cannot be recovered, for that which neither hath Certainty, nor can be reduced to Certainty. Dr. & Stud. l. 2. c. 9. L. L. 188.

Assize.

Nevertheless, in some Cases there may be a Certainty in an Incertainty. As for a Man to hold of his Lord to shear all his Sheep depasturing within the Lord's Manor; and it is certain enough, although the Lord hath not always a certain Number of Sheep, but sometimes a greater Number and sometimes a lesser; yet this Incertainty being reduced to the Manor which is certain, the Lord may distrain for. And a Distress is inseparably incident to every Service that may be reduced to Certainty. T. L. 102. L. L. 189.

Certainty of Sheep within the Manor.

A Man may not distrain for Rent after the Lease is ended; nor out of the Premises, except in some special Cases; nor in the Night, unless it be *Damage-feasant. ibid.*

But the Executors or Administrators of him who had Lands in Fee, or in Fee-

Executors and Administrators.

X 2

tail, *tert.*

tail, or for Life, may either have an Action of Debt against him that should pay it, or distrain for it; and so may the Husband after the Death of his Wife, his Executors or Administrators; and he which hath Rent for another's Life, for the Arrerages after his Death. *T. L. 103. L. L. 189.*

The Grantee of a Reversion may distrain for an Heriot. *2 Saund. 166.*

If the Beasts escape into any Ground, and the Lord distrain them for Rent, the Distress is good. *Idem, 289, 290.* And that 'tis not material whether they were Levant or Couchant, or not. *L. 189.* See after.

Where Cattle escaped out of a Close next adjacent; adjudged, that they might be distrained for Rent, although they escape through Default of the Fences, which the Party distraining ought to have repaired. *Id. 289.*

A Lord of the Soil may distrain for *Damage-feasant*, although he hath no Interest in the Herbage; for there may be other Damage besides eating the Grass. *Idem, 289.*

A Man puts Cattle into my Pasture for a Week, and afterwards I give him Notice that I will keep them no longer, and he will not fetch them away, I may then distrain *Damage-feasant*. *L. L. 190.*

*Cattle run in-
to another
Man's Tard.* If a Man take Cattle *Damage-feasant*, and as he is driving them to Pound, they run into the Yard or House

House of the Man that owns them, and he refuses to let them out again; he that distrained them may have a Writ of *Rescous* against the Owner of the Beasts for so doing. *T. L. 113. L. 190.*

If a Landlord come to distrain for Rent, and sees the Cattle, and the Lessee or his Servants drive them out of his Fee, he cannot have a Writ of *Rescous*, because the Cattle were not in his Possession; but he may follow after them, and distrain them in another Man's Grounds; it being for Rent, but not for *Damage-feasant*; for they must be taken *Damage-feasant*; that is, doing Damages. *Co. 1. par. Inst. f. 161.*

If a Man distrain Goods, and declare not the Cause or Reason wherefore he doth it, if they be put in a House, the Owner may break the House and take them out. *Clayton's Rep. p. 64. pl. 111.*

Or if a Man distrain Goods without Cause, the Owner may rescue them; but if they be pounded he cannot break the Pound, and take them out, because they are then in the Custody of the Law. *T. L. 104. L. 190.*

But if he find the Pound-door un-
lock'd, he may take them out.

Note, Although there be a general Prohibition in the Laws of England,

X 3

that

Lessee drives them out of the Fee.

No Cause declared.

Rescous by Owner.

General Prohibition.

that it shall not be lawful for any Man to enter upon the Freehold or Possession of another, without Permission and Authority of the Owner, or of the Law; yet this is not without Exception.

Exception.

For if a Man drive Beasts along the Highway, and the Beasts run into any Man's Corn or Grass, and he that driveth them goeth after them into the Grounds to fetch them out; he may justify the Entry into the Grounds to fetch them out. *Dr. & Stud. L. 1. c. 10. T. L. 105. L. L. 191.*

Landlord amerced not fined.

An Information lies not against a Landlord for taking excessive Distress of Tenants, because he ought to be amerced by the Statute of *Marlebridge, c. 4*. Whereas upon an Information he must of necessity be fined. *1 Vent. 104. 2 Inst. 107. Raym. 193, 205. 1 Mod. 71. 288.*

Also hindring the carrying of a lawful Distress, is a Provocation to make killing no more than Homicide. *1 Vent. 216. the Case of Goff Collector of Chimney-Money.*

Hemside.

The Court held, that Cattle driving to a Market, and put into Pasture by the way, were not privileged from being distrained; for it is by the Statute of *Marlebridge*, that Beasts cannot be distrain'd in the Highway, and not by the Common Law. *2 Vent. 50. 3 Lev. 260.*

Cattle driving to a Market.

Where

Where one holds a third Part of certain Land, and another two third Parts of the same Land undivided, he who hath the one Part cannot distrain the Cattle which where put in by Licence where he hath the two Parts. *Id.* 228, 284. *Hob.* 80, 103.

If a Man make a Feoffment, and that in Fee by Indenture, reserving a Rent, he cannot distrain for that Rent unless a Distress be expressly reserved; and if the Feoffment be made without an Indenture reserving Rent, that Reservation is void in the Law. And the like Law is, where a Gift in Tail, or a Lease for Term of Life is made, the Remainder over in Fee reserving a Rent, that Reservation is void in Law. *T. L.* 105. *L. L.* 191.

Also if a Man seized of Land for Term of Life granteth away his whole Estate reserving a Rent, that Reservation is void in the Law, without it be by Indenture; and if it be by Indenture he shall not distrain for the Rent, without a Clause of Distress be reserved. *Ibid.*

Also for Amerciaments in a Leet the Lord may distrain, although it be in the Highway; but for Amerciaments in a Court-Baron he cannot distrain; neither can he distrain for an Amerciament in the Leet, in a place seized into the King's Hands for the King's Debt. *Ibid.* *T. L.* 106. *L. L.* 192.

Void reservation of Rent.

Licence where one holds a Third, and another two Thirds.

Note, It's said, that tho' of common Right a Distress may be taken for a Fine in a Court-Leet; that is, where it is imposed for such Things as are of common Right incident to its Jurisdiction, as for Contempts, and the like; yet where Custom only enables them to set a Fine, it cannot be distrained for without a Custom so to do. 1 *Vent.* 105. *Raym.* 204. 2 *Keb.* 701, 739, 745. See before.

Rent reserved at two Feasts; liable but to one Distress.

If a Man make a Lease at *Michaelmas* for a Year; reserving a Rent payable at the Feasts of the Annunciation of our *Lady* and *St. Michael* the Arch-Angel; in this Case he may distrain for the Rent due at our *Lady-day*, but not for the Rent due at *Michaelmas*, because the Time is expired. *T. L.* and *L. L.* 106, 192.

Rent reserved at two Feasts; liable during the Term.

But if a Man make a Lease at the Feast of *Christmas*, for to endure to the Feast of *Christmas* next following, *viz.* for a Year reserving a Rent at the aforesaid Feasts of our *Lady-days* and *Michaelmas*; in this Case he shall distrain for both the Rents as long as the Term continues, that is to say, till the aforesaid Feast of *Christmas*. *Ibid.*

Where the Reversion is determined.

And if a Man have Lands for Term of Life of *J. N.* and makes a Lease for Terms of Years, reserving Rent, the Rent is behind, and *J. N.* dieth, there he shall not distrain, because his Reversion

version is determined. T. L. 107. L. L.
192. Dr. & Stud. *ibid.*

And if a Town or Parish be amerced, and the Neighbours by Assent assess a certain Sum upon every Inhabitant; and agree, that if it be not paid by such a Day, that certain Persons, thereunto assign'd, shall distrain; in this Case the Distress is lawful. *Ibid.*

If there be Lord and Tenant, and if the Tenant do hold of the Lord by Fealty and Rent, and the Lord doth grant away the Fealty, and reserve the Rent, and the Tenant attorneth; in this Case he that was Lord may not distrain for the Rent, for it is become a Rent-Seck. Dr. & Stud. *Ibid.*

But if a Man make a Gift in Tail to another, reserving Fealty and certain Rent; and after that he granteth away the Fealty, reserving the Rent and the Reversion to himself; in this Case he shall distrain for the Rent; for the Grant of the Fealty is void; for the Fealty cannot be severed from the Reversion. *Ibid.*

If there be Lord and Tenant, and the Tenant pay the Lord a greater Rent than is due to him, and that voluntarily without Coercion of Distress; in this Case the Lord having gain'd Seisin, may distrain for such Surplusage or Rent, and the Tenant cannot avoid it upon the Lord's Avowry, because of the Seisin of the Rent; but in such Case he may have

Assessments by a Parish, and Distress.

Fealty granted, and the Rent reserved.

Fealty and Rent upon a Gift in Tail, &c.

Tenant pays a greater Rent than is due.

Remedy.

have his Remedy by a Writ of *Ne injuste vexes* upon the Statute of *Magna Charta*. *cb. 10. F. N. B. 11. Co. 2. par. Inst. fo. 21. L. L. 195.*

But *note*, This Rule holdeth not in the Case of a Successor or Issue in Tail, for they may avoid such Incroachment in an Avowry; or if the Incroachment be of any other Nature than the Service, if that it be gained by Coercion of Distress; in such Case the Tenant may avoid such Seisin in an Avowry. *Co. 2. Inst. fo. 21. L. L. 195.*

*Incroachment
of Rent avoid-
ed.*

*Distress gone
both as to the
Rent and No-
mine penæ.*

A Rent-charge was granted for Years with a *Nomine penæ* and Clause of Distress if it were not paid at the Day, and the Rent was behind and the Years incurred, and it was moved if the Grantee might distrain for *Nomine penæ* the Years being incurred; and the Opinion of the whole Court was, That he could not distrain for the *Nomine penæ*, for that did depend on the Rent, and the Distress was gone as to both. *P. 19 Jac. in C. B. Tatter and Fryer's Case. Winch's Rep. fo. 7. L. L. 196.*

*Esday and Dis-
tresses may
not be laboured.*

If an Horse or Beast come into a Man's Ground as an Estray, he may not work them; neither may a Man work a Distress, for he hath neither Property or Possession *in Jure*; but if a Man hath an Horse, Ox, or Cows in Pawn, he hath a special Property in them, and may work and use them in such sort as the

*Exception of
Pawns.*

the Owner may do. *Owen's Rep. fo. 123. Cro. 2 par. fo. 143. L. L. ibid.*

If the Tenant forefall the Way with Force and Arms, and threaten in such Manner, that the Lord dares not come to demand or distrain for the Rent, or if there be no Distress on the Ground, nor none ready to pay the Rent; then in this Case the Lord may have a Writ of *Novel Disseisin* against the Tenant, and recover his Rent and Arrearages: And if the Rent be behind another Time, he may have a *Redisseisin*, and recover double Damages. *Co. Litt. f. 153. b. and 161. b Fleta l. 1. c. 42. Noy's Max. p. 45. See L. L. 196.*

Also for Heriot-service the Lord may distrain, but for Heriot-Custom he cannot distrain, but may seize. *Dr. and St. ibid. f. 75.*

Tenant to pay a Heriot Beast, or sh^l at the Election of the Lessor.

A Bailiff may not distrain for such Heriot before the Lessor had declared his Election, tho' the Lessor may. *Litt. Rep. 33, 35.*

A Heriot shall go with the Reversion as well as the Rent. 2 *Sam. d. 166.*

And it seems that a Bailiff, where a lawful Tender of Rent has been refused, may not distrain without the Command of the Lessor. *Id. 34. vid. ibid. 59.*

Where a Lease is made to commence on the Determination of another, if the new Lessee dies before his Term commences,

*Tenant fore-
falls the Way,
&c.*

*Novel Dissei-
sin*

Redisseisin

*Heriot-ser-
vice, &c.*

mences, it's said the Heriot reserved shall not be due. 1 *Vent.* 91. 2 *Saund.* 165. 2 *Keb.* 677. 1 *Sid.* 437.

Common.

If a Man have Common without Number, yet he ought not to surcharge the Soil, but that the Lord may have the Common also. 1 *Saund.* 345.

And if a Tenant overcharge the Soil where he has Common, without Number, the Lord may distrain him, but an Admeasurement does not lie. *Ib.*

If a Stranger put his Cattle into the Common, a Commoner may distrain them; but in the Avowry he ought to shew Damages. 2 *Lev.* 252. 3 *Lev.* 104. See *General Abridgment*, Tit. *Common.*

Equal Dower.

Note, If a Rent be assigned to make a Partition or Assignment of Dower equal, he or she to whom that Rent is assigned may distrain; and in all these Cases aforesaid, where a Man may distrain he may not distrain in the Night; but for *Damage-feasant*, that is, where he finds Beasts doing hurt in his Ground, he may distrain them Night or Day when he finds them; but for Waste, Reparations, Accompts, or for Debts upon Contracts, or such like, no Man can lawfully distrain. *T. L.* 108. *Dr.* and *St. fo.* 57. *L. L.* 193.

Amends tendered.

But if Beasts be distrained *Damage-feasant*, Tender of sufficient Amends makes

makes the Distrainer liable to Damages for Detainer, though not for the Distress. *Litt. Rep.* 34.

Note, By an Act of Parliament made at Oxford in the seventeenth Year of King Charles the Second; it is enacted, That whensoever any Plaintiff in Replevin shall be nonsuit before the *plaintiff nonsuited* Issue joined in any Suit of Replevin, *sued* by Plaintiff or Writ lawfully returned, removed, or depending in any of the King's Courts at *Westminster*, that the Defendant making a Suggestion in Nature of an Avowry or Cognizance *suggestion* for such Rent, to ascertain the Court of such Cause of Distress; then the Court, upon his Prayer, shall award a Writ to the Sheriff of the County *Writ of Inquiry to the Sheriff* where the Distress was taken, to enquire by the Oaths of twelve good and lawful Men of his Bailiwick, touching the Sum in Arrear at the Time of such Distress taken, and the Value of the Goods or Cattle distrained; and upon fifteen Days Notice *Notice* given to the Plaintiff or his Attorney in Court of the Sitting of such Inquiry; the Sheriff may enquire of the Truth of such Matters contained in the Writ, by the Oath of twelve Men, &c. And upon Return of the Inquisition, the Defendant (that is, he that distrained) shall have Judgment to recover against the Plaintiff the Arrearages of such Rent, in Case the Goods

Goods or Cattle distrained shall amount unto that Value; and in Case they shall not amount unto that Value, then so much as the Value of the said Goods and Cattle shall amount unto, together with his full Costs of Suit, and shall have Execution thereupon by *Fieri facias*, or *Elegit*, or otherwise, as the Law shall require. And in Case such Plaintiff shall be nonsuit after Cognizance or Avowry made, or Issue joined; or if the

Value.

*Verdict against
the Plaintiff,
&c.*

Verdict shall be given against such Plaintiff, then the Jurors that are impartialled or returned to enquire of such Issue, shall, at the Prayer of the Defendant, enquire concerning the Sum of the Arrearages, and the Value of the Goods or Cattle distrained; and thereupon the Avowant, or he that makes a Conusance shall have Judgment for such Arrearages, or so much thereof as the Goods and Cattle amount unto, together with his full Costs, and shall have Execution of the same as abovesaid.

And if the Judgment in any of the Courts aforesaid be given upon Demurrer for the Avowant, or him that maketh Conusance for any Rent, the Court shall, at the Prayer of the Defendant, award a Writ to enquire of the Value of such Distress, and upon the Return thereof, Judgment shall be given for the Avowant, or him that makes

*Judgment upon
a Demurrer.*

makes Conformance, as aforesaid, for the Arrears alleged to be behind in such Avowry or Conformance, if the Goods or Cattle so distrained shall amount to that Value; and in Case they shall not amount to that Value, then for so much as they amount unto, together with his full Costs of Suit, and have Execution thereof, as aforesaid.

And in all Cases aforesaid, where the *Second Distress* Distress is not of the Value of the Rent *for the Rent* Arrear, there the Party to whom such Arrearages are due, his Executors or Administrators may from Time to Time distrain again for the Residue of the said Arrears, which formerly a Man could not do; for he might not distrain twice for one Rent, for it was accounted his Folly that he took not a sufficient Distress at first; but now by this Statute, that, and several other Advantages are taken away from the Tenant.

Also see the late Statute for Amendment of the Law, by which 'tis enacted, That any Defendant or Tenant in any Action or Suit, or any Plaintiff in Replevin in any Court of Record, may, with the Leave of the said Court, plead as many several Matters thereto as he shall think necessary for his Defence.

Provided, That if any such Matter shall, upon a Demurrer join'd, be judged insufficient, Costs shall be given at the Discretion

The Trades-Man's Lawyer, and

Discretion of the Court; or if a Verdict shall be found upon any Issue in the said Cause for the Plaintiff or Demandant, Costs shall be also given in like Manner, unless the Judge who tried the said Issue, shall certify that the said Defendant, or Tenant, or Plaintiff in Replevin, had a probable Cause to plead such Matter which upon the said Issue shall be found against him.

*Vid. Appendix,
Tit. Leases, p.
44.*

A Copy of an Act made on the Second of May, Anno Dom. 1690, in the second Year of the Reign of King William and Queen Mary, for enabling the Sale of Goods distrained for Rent, in Case the Rent be not paid in a reasonable Time.

*Defect of the
former Law.*

WHereas the most ordinary and ready Way for Recovery of Arrears of Rent is by Distress, yet such Distresses not being to be sold, but only detained as Pledges for enforcing the Payment of such Rent, the Persons distraining have little Benefit thereby.

For the Remedying thereof, be it enacted and ordained by the King and Queen's most Excellent Majesties, by and with the Advice and Consent of the

Remedy.

the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by Authority of the same.

That from and after the first Day of *June*, in the Year of our Lord one thousand six hundred and ninety, that where any Goods or Chattels shall be distrained for any Rent reserved and due upon any Demise, Lease, or Contract whatsoever; and the Tenant and Owner of the Goods so distrained, shall not within five Days next after such Distress taken, and Notice thereof (with the Cause of such taking) left at the chief Mansion-House, or other most notorious Place on the Premises, charged with the Rent distrained for, replevy the same, with sufficient Security to be given to the Sheriff, according to Law, that then in such Case after such Distress and Notice, as aforesaid, and Expiration of the said five Days, the Person distraining shall and may with the Sheriff or Under-Sheriff of the County, or with the Constable of the Hundred, Parish, or Place where such Distress shall be taken (who are hereby required to be aiding and assisting therein) cause the Goods and Chattels so distrained to be appraised by two sworn Appraisers (whom such Sheriff, Under-Sheriff, or Constable, are hereby impowered to swear) to appraise the

Y

same

Goods and
Chattels di-
strained for
Rent.

If not replevied
within
five Days after
Notice.

May be ap-
praised in pre-
sence of Sheriff,
Under-Sheriff,
or Constable.

By two sworn
Appraisers.

same truly according to the best of their Understandings; and after such Appraisement, shall and may lawfully sell the Goods and Chattels so distrained for the best Price that can be gotten for the same, towards Satisfaction of the Rent for which the said Goods and Chattels shall be distrained, and of the Charges of such Distress, Appraisement, and Sale, leaving the Overplus (if any) in the Hands of the said Sheriff, Under-Sheriff, or Constable for the Owner's Use.

And whereas no Sheaves or Cocks of Corn loose, or in the Straw, or Hay in any Barn or Granary, or on any Hovel, Stack, or Rick, can by the Law be distrained, or otherwise secured for Rent, whereby Landlords are oftentimes couzened and deceived by their Tenants, who sell their Corn, Grain and Hay to Strangers, and remove the same from the Premises chargeable with such Rent, and thereby avoid the Payment of the same.

Be it further enacted by the Authority aforesaid, That for remedying the said Practice and Deceit, it shall, and may, from and after the said first Day of *June*, be lawful to and for any Person or Persons having Rent arrear, and due upon any such Demise, Lease, or Contract, as aforesaid, to seize and secure any Sheaves or Cocks of Corn, or Corn loose, or in the Straw, or Hay lying or being

*The Overplus
to be left with
the Sheriff or
Constable.*

*Defect of the
former Law as
to Corn and
Hay.*

Remedy.

*Corn and Hay
may be seized
and secured
where found.*

being in any Barn or Granary, or upon any Hovel, Stack or Rick, or otherwise upon any Part of the Land or Pound charged with such Rent, and to lockup or detain the same in the Place where the same shall be found, for or in the Nature of a Distress, until the same shall be replevied upon such Security to be given as aforesaid; and in Default of replevying the same, as aforesaid, within the Time aforesaid, to sell the same after such Appraisement thereof to be made, so as nevertheless such Corn, Grain, or Hay so distrained, as aforesaid, be not removed by the Person or Persons distraining to the Damage of the Owner thereof, out of the Place where the same shall be found and seized, but be kept there (as impounded) until the same shall be replevied or sold in Default of replevying the same within the Time aforesaid.

*For a Distress
till replevied
upon Security.*

*If not replevied
within 5
Days to be ap-
praised and
sold.*

*It must not be
removed till
appraised and
sold for Want
of such Re-
plevy.*

And be it further enacted by the Au-

thority aforesaid, That upon Pound-

Breach, or Rescous of Goods or Chattels

distrained for Rent, the Person or Per-

sons grieved thereby shall in a special

Action upon the Case for the Wrong

thereby sustained, recover his and their

treble Damages and Costs of Suit

against the Offender or Offenders in

any such Rescous or Pound-breach, any

or either of them, or against the Owners

of the Goods distrained, in Case the

same

*In Case of
Pound-breach,
or Rescous of
the Goods di-
strained.*

*The Party shall
recover treble
Damages and
Costs against
the Offender or
Owner, if they
come to his use
thereby.*

same be afterwards found to have come to his Use or Possession.

Provided always, and be it further enacted, That in Case any such Distress and Sale, as aforesaid, shall be made by Vertue or Colour of this present Act for Rent, pretended to be arrear and due, where, in Truth, no Rent is arrear or due to the Person or Persons distraining, or to him or them in whose Name or Names or Right, such Distress shall be taken, as aforesaid, that then the Owner of such Goods or Chattels distrained and sold as aforesaid, his Executors or Administrators shall and may by Action of Trespass, or upon the Case, to be brought against the Person or Persons so distraining, any or either of them, his or their Executors or Administrators, recover double of the Value of the Goods or Chattels so distrained and sold, together with full Costs of Suit.

Note, The Landlord may distrain without a Constable.

By the latter Clause of this Act, it seems, that if Goods be distrained upon Pretence for Rent, where none is due, yet no Action lies by this Act unless they were also sold as well as distrained: So that the Party must not in this Case replevy his Goods, if he intend to take the Benefit of this Act.

But he may replevy them, or let them lie, and have the Benefit of the former Law.

That if any Goods be distrained and sold on Pretence of Rent where no Rent is due.

The Owner shall recover double Value, and full Costs.

Observations.

Goods.

So

So the Party distraining Corn and Corn, &c. Hay, and keeping it upon the Place under Pretence of Rent, is liable as formerly, to an Action and Damages, if he cannot justify that Rent was then due; and if he can, he may detain them there till replevied or sold by Virtue of this Act.

And yet it seems that after Appraisement of the Corn or Hay, and Tender of the Money, and reasonable Charges by some Person willing to buy the same; he may not detain the Corn or Hay longer in the Barn, Granary, Hovel, &c. for this would be great Prejudice to the Owner, if the Party distraining may sell them after Appraisement, when, and to whom he will. *Sed quer.*

The Words are, *Be not removed to the Damage of the Owner* thereof. This might have been enough if the Party distraining had Right, he is bound to take Care of Damage.

But it seems the Corn and Hay must not be removed, for the following Words are,

But be kept there (as impounded) until the same shall be replevied or sold within the Time aforesaid; that is, after the Appraisement. And it is the Party distraining that shall and may cause them to be appraised; and when? after five Days Notice. After, but not when, or how soon. Ergo Quere.

*The Form of
the Oath to be
administered to
the Appraisers.*

YOU shall well and truly, according to the best of your Understanding, appraise the Goods and Chattels of A. B. distrained on for Rent by C. D. of which Goods and Chattels you shall have good Sight and Consideration.

So help you God.

CHAP. XX.

Where a Promise or Contract, and Action therefore, or otherwise, may be said to be gone or discharged; and therein concerning Executors and Administrators.

1. IT is to be observed that Actions upon Agreement, Promises and Contracts, &c. may be gone and discharged several Ways, as by Death of the Parties, or one of them, and sometimes by the Death of another Person.

2. By Determination of the Contract it self, which may be several Ways, as by a Countermand or Discharge; or

3. By Judgment or Recovery in a former Action for the same Cause.

4. By taking of a better Security.

5. By a Release, &c.

6. By

6. By Acceptance of other Things.
7. By Accords of some other subsequent Agreement, as Tender of A-
mends, &c.
8. And lastly, by Arbitrament.
Of all which in Order.

1: An Action may be gone, either by *Contract & the Death of the Party that doth the Wrong, or by the Party that suffereth the Wrong*; for it is a Rule, That a personal Action dies with the Person, as in an Action of Battery, Slander, Conspiracy, Nuisance, Rescue, or for suffering an Escape, and the like. *Co. 4. 93. Co. 9. 86. Dyer 322.*

So if one promise to appear at a Court the next Term, and dies before the Term, the Action is gone.

But in Case of Contracts for Payment of Money, and some other such like Things, it is otherwise, and the Action shall continue for and against the Executors or Administrators, who may charge or be charged upon it, as the Intestate or Testator himself might have done. *Co. Litt. 53. Dyer 114. & Cro. 625.*

For it is held that a Promise (without a Deed or Specialty) is no more personal than a Covenant by Specialty, and therefore dieth not with the Person, but the Executors and Administrators shall be chargeable. *4 Co. 92. 9 Co. 86.*

Y 4

So

The Trades-Man's Lawyer, and

So that an Action of the Case will lie against the Executors or Administrators upon the Contract or Promise of the Testator exprefs'd or implied, and that without any Averment of Assets; and so in all Cases where there is any Thing due which ariseth by Way of Contract, and where the Ground of a Promise is a true Debt. As where he shall for good Cause promise to pay Money, or where he shall borrow Money, or where he shall buy or have of my Goods. *Co. 9. 86. Yelv. 55, 56, 57. Brownl. 2. 137. Owen, 56. Cro. (1.) 59. Cro. (2.) 613. 511. Dyer 114. Bulstr. (1.) 235, 236.*

And so upon a collateral Promise made and broken by the Testator in his Life-time; as where he shall promise to deliver up a Bond, or the like; but these collateral Promises have formerly been much controverted, and the Law then taken otherwise; but now it's said the Executor shall be charged alike in both Cases. See *Hutton 17. Cro. 2. 571. Hob. 278. Cro. 2. 662, 663. Hill. 20 Jac. B. R. Fawcett and Charter.*

And though it be said an Executor or Administrator cannot be charged in an Account for any Receipt or Occupation by the Deceased; yet it is held, That if one receive my Money to account, and he and I cast it up, and agree in certain what is due, and then he die; in this

this Case I may have an Action of the Case against the Executor or Administrator for what is cast up and agreed; for by an Account between the Parties, that which was before incertain is made certain, and an Action will lie. *Co. 4. 94. Co. 8. 133. and Hill. 13 Jac. Telv. 70.* But by the late Act for Amendment of the Law, Actions of Account may be brought against the Executors and Administrators of every Guardian, Bailiff, and Receiver, and by one Joint-Tenant and Tenant in Common, his Executors and Administrators, against the other as Bailiff, for receiving more than comes to his just Share or Proportion, and against the Executors and Administrators of such Joint-Tenant or Tenant in Common.

But an Action personal, that is founded upon a Wrong, as upon an Escape, Rescue, and the like, as before observed, is so annexed to the Persons, that it dieth with them, and therefore must be brought in the Life-time of him that doth, and of him that suffereth the Wrong. *Co. 4. 92. Co. 8. 86.*

And as the Executors and Administrators are thus chargeable in the Case of the Contract and Promise of the Testator or Intestate; so they may have an Action upon the Case against another Man for Money, for Corn,
or

Action founded upon a Wrong done by Testator lieth not against Executors.

Rule for Executors.

or other Things sold by the Testator; or upon Promise to save harmless, or the like, made to the Testator, and so regularly may take Advantage of all Contracts made by the Testator; as for Rent due, or upon a Trover and Conversion, or upon a Promise made to the Testator, and the like. *Cro. 1. 159, 377. Style's Rep. 463. Co. 9. 86. Cro. 2. 299.*

Note, That if an Executor promise any Person who is about to sue him, (for some Duty or Action arising from the Testator) that if he will forbear his Suit, he will pay him, it is good. *Litt. Rep. 5. Lev. 71. 222.* And the like of a Legacy, though there be no Assets. *2 Lev. 3.* Yet this Promise will not now bind, unless it be in Writing under the Executor's Hand, as before observ'd.

*Promise upon
Forbearance to
prosecute.*

Note, An Executor may sue an Action upon two Promises, the one made to himself, the other to his Testator; but an Executor cannot be sued upon two Promises; the one made by himself, the other by the Testator. *Idem, 288.*

*Action upon
two Promises.*

See *1 Vent. 120, 159, 268.* Where the Executor's Promise, in relation to the Testator's Debt, shall make the Debt his own. And *Vid. 1 Cro. 804. Telv. 84, 114. 2 Saund. 136. 2 Keb. 811. 1 Sid. 238. Raym. 127.*

An Executor may detain for a Debt *Detainer by Executor.* due upon a simple Contract, against

a Debt grounded upon a *Devastavit.* 2 *Vent.* 40. But an Executor in his own Wrong, cannot detain. *Idem*, 180.

After an Executor assents to a *Le-Affus to a Legacy*, he shall never bring it back again *gay.* to pay Debts; but it is otherwise where he is sued, and pays by Decree in *Chancery*; there the Legatee shall refund. *Id.* 358.

Also, where an Executor pays a Debt upon a simple Contract, there shall be no refunding to a Creditor of a higher Nature. *Idem*, 350.

Note, The Mother, Executrix, shall *Discounting by the Mother Executrix.* not discount for Maintenance and Education out of the Money left by the Father; for the Mother ought to maintain the Child; but the Money paid for binding him Apprentice may be discounted. *Idem*, 353.

Minority, as to Executorship, determines at the Age of Seventeen; and then a personal Estate, devised to such Executor, vests in him: *Idem*, 368.

Note, The Heir, and not the Executor, shall have the Surplusage of Lands leased for Payment of Debts. *Idem*, 359.

Again, as to the Death of the *Par-Contract ap-ty*: Suppose one promise to a Man, *portioned.* being an Artist, 10*l.* to instruct him in his Art for seven Years; this Contract, upon the making of it, seems perfect

Perfect enough ; yet if the Artift die before the feven Years ended, the Money is loft on his Side ; but if the other had paid him the 10 *l.* or secured it by Bond, then it had been loft on his Side. 21 *Ed.* 2. 11.

*Servant de-
parts or dies.*

If one ſhould promiſe to ſerve me a Year for 10 *l.* this Agreement is complete ; but if before the Year expired, he departs out of my Service, or dies, or we part by Agreement and Conſent, the Whole 10 *l.* to him is loft. Yet if the Money were to be paid quarterly, and he ſerved one Quarter, it is ſaid in this Caſe, he ſhall have a Quarter's Wages. 10 *Ed.* 4. 18. 10 *H.* 6. 25.

So if the Agreement be to pay ſo much for a thing ſold, as *J. S.* ſhall ſet down, and *J. S.* die before he ſet down, this Contract is ended, and the Action gone. 14 *H.* 8. 19.

*Determinati-
on by Reference
to a third
Perſon.*

2*dly.* By Determination of the Contract.

If one, as before, agree to give me ſo much for my Horſe, as a third Perſon ſhall judge him to be worth, this Contract is not complete ; nor can any Action be grounded upon it till ſuch Judgment be given, and that muſt be done in a reaſonable Time ; and if ſuch third Perſon die before he give his Judgment, the Contract is ſaid to be determined. *Plowd.* 6.

*Contract de-
termined.*

But

But in case of Judgment given, the Horse must be delivered, or the Money paid before the Property alter, or Action can be brought for the Money. *Dyer* 98. 356. 5 *Co.* 83. *Plow.* 302, 479.

So if a Bargain be, that the Buyer shall go and see the thing bargain'd for, and if he like it shall give so much for it; and he when he seeth it, doth declare his Liking of it, and take it away, the Bargain is perfect, and he cannot afterwards by Disagreement avoid it: So if he at Sight say, he dislikes it, hereby the Contract is determined. *Dyer* 99.

So if the Agreement be, that he shall see the Thing, and if he like it, when he hath seen it, for so much Money, he shall have it; in this Case, when he hath paid the Money, and agreed to have it at the Rate, and not before, the Contract is perfect, and Actions will arise. 17 *Ed.* 4. 1.

So if two speak together about an Agreement, and in the midst of their Discourse they break off, and say, they will talk of it further another Time, this is imperfect, and no Action will arise upon this Conference. *Plowd.* 302.

So if the Agreement be to pay Part of the Money presently, and the rest at a Day to come, and the Seller give him Time till that Day to refuse; in this Case the Bargain is not perfect till the Day; and yet, if he agree to it before the Day, this may perfect it, and reciprocal Actions will lie for the Things and Money.

*Place agreed,
and Time set
for Delivery.*

If a Contract be for any Thing at a Price, but it is Part of the Bargain, that the Thing must be delivered to the Buyer at such a Time and Place; this is a good Contract to alter the Property, if the Thing be delivered at the Time and Place, otherwise not. *Fitz. M. de Faits*, 144.

But if I prize the Wares, and the Tradesman say so much, the Bargain is not perfect till the Money be paid, unless a Day be agreed on for Payment of the Money. 17 *Ed.* 4. 1.

Again, If I sell one Ware for 20*l.* to be paid when they are delivered, this is a good Contract; and when they are delivered, and not before, the Action will arise upon it. *Vid. Fitz. Debt.* §6,

144.

*Promise by
Word of Mouth
discharged by
Word of Mouth.*

A parol Promise or Contract may be discharged where it is executory, and before it be broken, by Word of Mouth; for one parol Contract may be discharged by another; and therefore if the Plaintiff, before any Breach of the Promise, discharge the other Party of the Promise, this will determine it, and all Actions upon it; but after a Promise is broken, no parol Contract will discharge it. 1 *Bro.* 279. *Style's Reg.* 31, 75. *Style's Rep.* 303.

Not after Promise broken.

So if one agree to help another in a Business, and the other agree that he shall have so much for it, and before any thing is done, it is agreed amongst them, that nothing shall be done or paid; this is.

is an End and Discharge of the first Promise. 2 *Cro.* 620.

Also it is said, that if a Physician or Chirurgeon be retain'd and engaged in a Cure, or a Carpenter in Building of a House for me, and after, and before it be done, I discharge him by Word of Mouth, the Contract is at an End; and if there be a certain Sum to be paid, it is said I must pay it all; if not, I must pay for that which is done, what shall be reasonable. 2 *Bull.* 333. 18 *Ed.* 4. 8. 19 *Ed.* 4. 2. See after.

If a Contract be between *A.* and *B.* that *C.* shall marry *B.* by such a Day, and before the Day *A.* himself marry her, the Contract is determined. 21 *Ed.* 4. 53.

But if a Man (by Writing) promise a Woman, in Consideration that she will marry him, that if after the Marriage she out-live him, he will leave her worth 100*l.* such a Promise is good, and not released by their Intermarriage; and an Action will lie for the Woman. 2 *Cro.* 57, 57*l.* *Benl. Rep.* 147. *Hutt.* 17.

Note. An Action was allowed for a Woman, against one that writ a Letter to her Suitor about to marry her, that she was contracted to the Letter-sender. 1 *Lev.* 53. *Idem*, 147. *Vid. Litt. Rep.* 32.

Note,

*A Woman
Warden mar-
ries.*

Note, It was said, that if a Woman be Warden of the *Fleet*, and one in Prison there marry her, he is thereby out of Prison, and in the Eye of the Law at large; because a Husband cannot be in Custody to his Wife. 2. *Vent.* 19. *Pl. Com.* 37. a.

An Action upon Promise for a valuable Consideration was brought, that the Defendant promised to go such a Voyage in such a Ship, before *August* following; and alleges for Breach, That the Defendant did not perform it. The Defendant pleaded, That before any Breach, such a Day, at such a Place, the Plaintiff discharged him of the Promise; and the Plaintiff demurred, because he did not shew how.

*The Defendant
promises to go
a Voyage.*

*And the Plain-
tiff discharged
him before the
day, but shews
not how.*

But it was adjudged for the Defendant, that this was a good Discharge, without shewing how. *Cro.* 1. 295. *Townsend* and *Hunt. Vid. postea.*

Yet in the Case of *Richards*, Executrix of *Richards*, against *Bartlett*, for ten Pounds promised to her Husband for two Weights of Corn delivered, Defendant pleads, That after the Promise, the Plaintiff, in Consideration that the said two Weights were drowned by Tempest, and in Consideration that the Defendant would pay to the Plaintiff 3 s. 4 d. for every 20 s. of the said 10 l. amounting to 33 Shillings and 4 Pence, did discharge the said Defendant of the said Promise; and averred further, That he

*Consideration
no Benefit to
the Plaintiff,
nor Loss to the
Defendant.*

he had always been ready to pay the said Sum newly agreed. Upon which the Plaintiff demurred, and the Opinion of the whole Court was clearly for the Plaintiff, and Judgment accordingly.

For note, That this being shewn, seems to be no Consideration, because no Benefit to the Plaintiff, or Loss to the Defendant. *Leo. 19.*

Upon a Promise the Plaintiff says, Whereas *J. S.* was in Execution for 40*l.* the Defendant said, Deliver *J. S.* out of Execution, and what it costs you, I will repay. Whereupon *J. S.* was discharged by the Plaintiff. The Defendant pleads, That after the Promise, and before the Plaintiff had done any Thing in that Business, he forbade him to meddle therein, and that he would not stand to his Promise: Whereupon the Plaintiff said the Plea was not sufficient, and so demurred; and it was adjudged for the Plaintiff.

Houghton Justice said, That a Man may discharge an *Assumpsit* or Promise made to himself, but he cannot discharge a Promise made by himself. At another Day the Defendant's Counsel mov'd, that it was a good Plea, and that as long as nothing was done, it was but an executory Promise; and *Dodderidge* then said, If I promise to *J. S.* That if he will build a House upon my Land before such a Day I will pay him 100*l.* and I countermand it before

Countermand
of a Promise,
&c.

Z

he

he hath done any Thing concerning the House, it is a good Countermand. But *Houghton* was contrary. But he said, that may be considered in Damages; and it was thereupon adjourned, and afterwards in *Trinity Term* Judgment was given for the Plaintiff. *Cro. 2. 483. Hartford and Pile. Pasc. 16 Jac. B. R.*

Promise by Word of Mouth, afterwards put into Writing.

The Plaintiff brings an Action upon the Case upon a parol Promise (or by Word of Mouth) to find Meat, Drink, Lodging, &c. for the Defendant, and to teach him the Trade of a Mercer. (*Note*, this Agreement was afterwards by Consent of both Parties put in Writing) Upon the Trial the Plaintiff obtains a Verdict upon the parol Agreement, and hath Judgment thereupon. And

Afterwards the Defendant brings a Writ of Error in the *King's Bench*, and assigns for Error, that there was no Promise declared upon, or proved sufficient to warrant the Verdict and Judgment, because that by reducing the Agreement to Writing, the parol Agreement became utterly void, and so no Action could be brought upon it, but it ought to have been brought upon the Agreement expressed in the Deed, and the Issue ought to have been joined upon that, and not upon the verbal Agreement which is void; and the Rule of Court was made to

This must be meant of a Writing sealed &c. otherwise it could be no Deed.

to shew Cause why the Judgment should not be reversed. *Cartise vers. Columbine. Style 19, 20.*

In an Action upon the Case the Plaintiff declared upon a *Quantum meruit* for 40 *s.* and upon an *Indebitatus Assumpsit* for 40 *s.* likewise. The Defendant acknowledged the Promises, but further said, That he and the Plaintiff accounted together for divers Sums of Money, and that upon the Foot of the Account the Defendant was found indebted to the Plaintiff in 3 *s.* and that the Plaintiff in Consideration that the Defendant promised to pay him those 3 *s.* discharged him of all Demands. The Plaintiff demurred, and the Court gave Judgment against him, and held, that if two Men mutually indebted to each other do account together, and the one is found in Arrear so much, and there be an express Agreement to pay the Sum found to be in Arrear, and each to stand discharged of all other Demands; that this is a good Discharge in Law, and the Parties cannot resort to the original Contracts. But it seem'd otherwise if there was but one Debt betwixt them, and they enter'd into an Account; they held also that any Promise might well be discharged by Parol or Word of Mouth, but not after 'tis broken, for then it is a Debt. *Mod. Rep. 206. 2 Rol 408.*

In an Action upon the Case, the Plaintiff declared, That the Defendant, in

*Account be-
tween two
Debtors.*

*No Discharge
after Promise
broken.*

Promise to exchange Horses.

Consideration that the Plaintiff would deliver unto him such a Horse promised to deliver to the Plaintiff in Lieu thereof another Horse, and averr'd that the Plaintiff had delivered to the Defendant the said Horse, and requested him to perform his Promise, &c. The Defendant pleaded that the Plaintiff before the Action brought, discharged him of that Promise, but says not how; to which the Plaintiff demurred. It was said, That if he had pleaded a Discharge before the Request made, the Plea had been good without shewing how he discharged him; but after the Request once made, a verbal Discharge is not sufficient; and Judgment was for the Plaintiff. 1 *Mod. Rep.* 262. 2 *Leon.* 214. 2 *Cro.* 620. *Cro. Car.* 384.

Discharge, but] says not how.

Discharge before Request, good.

Must be pleaded.

Exoneravit (or a Discharge) ought to be pleaded, and not given in Evidence. 2 *Lev.* 81.

3dly, By Judgment or Recovery in a former Action for the same Cause.

A Recovery in one Action is a Bar to all other Actions touching the same Thing, where the Recovery is of a thing certain. *Style's Rep.* 4. *Telv.* 67, 68.

By Recovery.

Judgment and no Execution.

Also it is to be observed, that if a Person bring an Action upon a Contract, and get a Judgment for Damages in the Suit, thereby the Contract is determined, and no Action can be brought upon it

it afterwards, altho' Execution be not had thereupon. *Dyer* 21. 39 *H* 6. 34.

So if a Man hath been barr'd in another Suit of another Nature for the same Cause, by Demurrer, or upon a Confession, or upon a Verdict, or by a Wager of Law: This is an End of the Suit, and will be a Bar to it for ever. *Bro. S.* 197. 12 *Ed.* 4. 13. *Esloppe.* 78. *Dyer* 130.

So if an Action of Debt hath been brought upon an executory Contract, and the Plaintiff hath recovered in it, by this the Action is gone. 4 *Co.* 94. 1 *Cro.* 24.

But if another Suit be brought upon the same Cause, and no Judgment be had in it, this will not discharge the former Suit, nor may it be pleaded in Bar to it. *Fitz. Ass. Case* 105.

Also if an Action on the Case be brought upon a Promise, a Recovery or Bar in this Action will be a good Bar in an Action of Debt brought upon the same Contract; so likewise a Recovery or Bar in an Action of Debt, is a good Bar upon an Action on the Case upon a Promise. 4 *Co.* 94. *Bro. Assion, &c.* 105.

Note, Where a Man hath recovered the same Thing in kind, or a Recompence for it of one Man, he may not afterwards sue another Man to recover it again. *Telw.* 67, 68. 7 *H.* 4. 30.

In Account upon Goods delivered, it is a good Plea to say, That in an Action of Detinue before brought by the Plain-

Plaintiff, the Defendant did wage his Law. 2 R. 3. 14. and 19. *Hern.* 230.

*Trespals to
Trove.*

A Recovery in Trespals is a good Plea in Bar of Trover. *Pollexf. Rep.* 634.

*In Case for
Words.*

In Case for Words of Perjury, the Defendant pleaded a former Action brought for the same Words, whereupon he justified, and that a Verdict and Judgment was for the Defendant. *Hern.* 151.

Retraxit.

Also observe, That if the Plaintiff enter a *Retraxit* in any such Action, it will be a Bar to him in all other Actions of the like, or of an inferior Nature. *Co. Litt.* 139. But that an Action is depending in an inferior Court for the same Cause, is no Plea to bar. 5 *Co.* 61.

*Judgment in
an inferior
Court.*

In Debt to plead that the Plaintiff upon a *Fussicies* had a Judgment for the same Debt in the County-Court, it seems this is no good Plea, unless Execution be had upon it. 6 *Co.* 49. *Bro. Debt* 29.

Note, In an Action upon a Promise brought in an inferior Court, the Performance of the Promise must be as well within the Jurisdiction of the Court as the Promise itself. 1 *Ventr.* 72. 2 *Keb.* 626, 646, 696.

*Within Juris-
diction.*

Also an Action of the Case lies against a Man that commences an Action against him in an inferior Court, where the Cause of Action did arise out of the Jurisdiction. 1 *Ventr.* 369. *T. Jones* 214. 1 *Mod.* 81. *Keilw.* 55. 106. 2 *Mod.* 195. &c.

*Out of the Ju-
risdiction.*

Note,

Note, That in the Court of Admiralty, Mariners, as well Officers as common Seamen, may sue for Wages, and some only may sue there by themselves, as well as when all join. 2 *Ventr.* 181.

Mariners Wages.

Also if the Suit be there against some of the Part-Owners, the Course is not to charge them with the whole, but according to their proportionable Parts. *Idem, ibid.* See the late Act for Amendment of the Law concerning Suits in the Admiralty for Seamen's Wages.

Note further, That where a Plaintiff is barred by Plea to the Writ, he may have the same Writ again, if by a Plea to the Action of the Writ, he may have his right Action; also if the Plea be to the Action, and he be barr'd by Judgment upon Demurrer, Confession or Verdict in a personal Action, it is a Bar for ever; if in a real Action, he is put to a Writ of an higher Nature. 5 *Co.* 7.

Bar by Plea to the Writ, &c.

4^{thly}. By taking better Security.

As to this it is to be observed, That if a Debt be due to me upon an executory Contract, and I take a Bond or Bill obligatory for it, or for Part of it, of him that owes it, by this the whole Contract is determined, and the Action that lay upon the Contract discharged, and no Action can be brought upon it afterwards.

By Bond or Bill executed.

But if the second Security be only a Writing, or Writing indented, or a Writing

Z 4 ting

ting sealed only, and not sealed and delivered, and so made a Deed; this will not determine the Contract.

Contract not discharged by Bond or Bill not good in Law, &c.

Also if a Man take a Bond or Bill that is not good in Law, or that shall afterwards become void in Law, or if a Bond or Bill is made to his Use, but he does not accept it; or if the Obligation accepted of be from another Person, and not the Person that was bound by the Promise, in these Cases the Contract is not determined. *F. N. B. 120, 121. Dyer 21, 130. 6 Co. 45. Telv. 171. Style's Rep. 309.*

By second Promise.

Note also, That a second Promise may discharge the first Promise, and consequently the Action upon it. *Noy's Rep. 140.*

By parol Agreement put into Writing.

Also if there be an Agreement by Word of Mouth, and this be put into Writing to make a Deed of it, the parol Agreement is gone, and no Action will lie upon it. *Style's Rep. 19.*

By a Release in Deed or in Law.

5thly. By a Release.

A Contract may be discharged by a Release in Deed or in Law, so that if a Promise be made to me by one, and I release it to him; or by two, and I release to one of them; this is a Discharge of the Contract, and the Action upon it. *Hob. Rep. 91.*

By Release of all Demands, the Extent thereof.

By a Release of all Demands without more Words, are released all Rights and Titles to Land, Warranties, Conditions

ditions annexed to Estates, both before and after they be broken and performed; and also Statutes, Obligations, Contracts, Recognizances, Covenants, Rents, Commons, and the like; and all manner of Actions, real and personal, Appeals, Debts, Annuities, Judgments, Executions, and all other Duties whatsoever, except it be a meer Possibility or future Duty; as a Rent payable after Death, and the like. *Co. Litt.* 291. *Shep. Touch.*

343. *Noy's Max.* 67. *L. L.* 44.

So if Rent upon a Lease is to be paid at *Michaelmas*, and in the mean Time the Lessor give a general Release to the

*Future Duty
not released, as
Rent, &c.*

Lessee of all Actions; yet this doth not remit the Rent; but the Lessor may have an Action of Debt for it after the Day, because it was neither due nor to be paid at the Time of the Release made, and not a thing merely in Action, because it may be granted over; but by a Release of Rent, the Rent is extinct and discharged, whether the Day of Payment be come or not. *Lit. Ten.* 104. *Co. Litt.* 292. *L. L.* 44.

A Release of all manner of Actions doth not take away an Entry, nor the taking of one's Goods again; nor is it any Plea against an Executor. *Noy's Max.* 76.

A Release made to a Lessee for Years To a Lessee before his Entry, is void. *Idem.* 75. *fore Entry.*

Note, A Man may not release upon a Condition, nor for Time, nor for Part,

*No Release
upon Condi-
tion.*

Part, but either the Condition is void, and the Time is void; and the Release shall enure to the Party to whom it was made, for ever, for the Whole, by way of Extinguishment. But a Man may deliver a Release to another as an Escrow, to be delivered to a third Person as his Act and Deed, if the said third Person do perform such a Thing as he that delivers the Release shall nominate; also a Release upon a Condition by Deed indented may be good. *Noy's Max^s 75.*

*Delivered as
an Escrow.*

Note, A Man may covenant not to sue, &c. in 100 Years.

By Jointenant.

A Jointenant of a Rent-Charge may release, yet all the Rent is not extinct; and if he purchase the Lands his Fellow shall have the Rent still. *Idem, ibid.*

By Grantors.

If a Grantor release Parcel of a Rent-Charge to the Grantee, yet all the Rent is not extinct: *Ibid.*

Heirs.

Also a Release to charge an Estate ought to have these words, Heirs, or wordsto shew what Estate he shall have to whom the Release is made. *Ibid.*

*By one Exe-
cutor.*

One Executor may convey the Goods or release Debts without his Companion; and any one of them may do as much as all together. 4 *Ed.* 4. 14, 15.

*By Admini-
strators.*

But it is said to be otherwise of Administrators, because they have but one joint Authority.

Also

Also an Executor may release before Probate of the Will or Testament; but cannot have Debt before the Probate. 5 Co. 28. 7 H. 4. 18. See before.

6thly, By Acceptance of other Things, *By Acceptance* which is not much unlike that of taking *of other Things.* better Security.

For it is said, That if a Condition *In Satisfaction* be for Payment of Money, yet by *of Conditions.* Agreement any other Thing may be given in Satisfaction of the Money; so that if a Feoffee or Obligee accept a Horse, &c. in Satisfaction, this is good; but if the Condition were for Delivery of a Horse, &c. although the Obligee or Feoffee accept Money, &c. for the Horse, it is no Performance of the Condition; and so it is of all other collateral Conditions. 9 Co. 78. *Conditions collateral.* 12 H. 23. &c.

Also if Debt be due on a Bond, *Statute for a* and the Party take a Statute for this *Bond, no Dis-* Debt from the Obligor, this, it is said, *charge.* doth not determine the Debt due by the Obligation; but an Action may be brought upon either of them at Election; and the Statute is no good Bar to the Obligation. *Vid.* 6 Co. 45, 49. *Bro. Debt.* 27.

Again it is said, That when Money *Payment to be* is to be paid to a Stranger, there *made to a* if the Stranger accept of an Horse, *stranger.* or any collateral Thing, in Satisfaction of the Money, it is no Performance of

of the Condition; because the Condition is to be strictly perform'd in that Case. But if the Condition be, that a Stranger shall pay to the Obligee a Sum of Money, there the Obligee, being Party, &c. may receive a Horse, &c. in Satisfaction. 5 Co. 17. *Dyer* 35. 27 H. 8. 1.

By a Surrender. The Lessee may plead a Surrender and Acceptance thereof.

Assignment. Also an Assignment of a Term, and Acceptance of Rent from the Assignee, may be pleaded, as before observed.

And it is said, That if an Obligor, By Payment of Feoffee or Lessee, pay a less Sum, either before the Day, or at another Place than is limited by the Condition, &c. and the Obligee, Feoffor, or Lessor receiveth it; this is a good Satisfaction. Co. Litt. 212. See before.

By Acquittance. If part of a Debt upon Bond be received, and an Acquittance given before the Action, it is a Bar only of so much as was received; but if it be after the Action brought, it seems it may be pleaded in Bar to the Whole. 2 Vent. 153. *Style* 212. *Aleyn* 65. *Keilw.* 20, 162. 3 H. 7. 3 H. 4. 15. *Vid. Mo.* 886.

A Consideration creates a Debt, tho' that Debt be not reduc'd to a certain Sum, as in the Case of a *Quantum meruit*. 2 Vent. 282. Also Debt secured, is Payment in Law. *Id.* 358.

7thly. By Accord, or by some other *By Accord.*
subsequent Agreement, as Tender of
Amends, &c.

In all the following Cases Accord,
with Satisfaction, is a good Plea; as,

1. In all Cases *Vi & Armis*, where *Where Accord*
Trespas by Force and Arms is sup- *with Satisfac-*
posed. *Him is a good*

2. Where *Capias* and Exigent lie by
the Common Law. *Plea.*

3. In Ejectment, because it is but in
the Nature of a Trespas.

4. In Appeal of *Mayhem*; so in At-
taint, because it is not founded upon
the Record, but upon the False Oath
also.

5. In Detinue concerning personal
Things.

6. In Detinue concerning Charters
of Freehold.

7. In an Action of Waste, in *le tenuit*,
but not in the *Tenet*. 6 Co. 44. 2 Inst.
307.

8. In an Action of Debt upon a
Lease for Years.

9. In a Promise to build a House.

10. In an Action of Covenant. 9 Co.
78, 79. See after.

Note, In pleading of an Accord, it is *How to be*
to be observed, that the Thing given *pleaded.*
and received ought to be valuable and
satisfactory; a Charge to the Giver,
and a Benefit to the Receiver. *Dyer*
356. *Fitz. Accord*, 3, 4.

And

And yet if the Defendant give the Plaintiff a Portle of Wine in Satisfaction, and he agrees to it, this is a good Accord, and Bar in the Action. *Fitz. Bar. 29.*

Also it must be compleatly finished and executed, and Satisfaction must be made according to the Agreement before any Action be brought; Tender without for Tender of Money without Payment, is no good Plea in Bar of Trespass. *N. B. 122. 17 Ed. 4. 2. See after.*

*Tender without
Payment.*

Also it must be in the Life-time of him that did the Wrong; for if it be executed by the Heir or Executor of the Trespasser, this will be no Bar where the Action may lie against the Executor. *Dyer 356.*

*In the Party's
Life-time.*

Also the Party to whom the Wrong is done must accept the Money, &c. according to the Agreement, for it seems notwithstanding the Accord he may refuse it; and therefore Tender without Acceptance will be no Bar. 9 *Co. 79. Dyer 356.*

*Tender without
Acceptance.*

If divers do a Trespass, and one make a good Accord, this will discharge and be a Bar for all the rest: So if a Stranger or Friend give a Recompence, this it seems is as good as if the Party himself did give it. 9 *Co. 79.*

*By one in
Trespass.*

So

So if divers do a Trespass, and the *Release to one Party* release it by general or special *in Trespass.* Words to one of them, this is a Discharge of all; and every one of them may plead it in Bar if he can get and shew it; for they are but as one Trespasser. *Hob. Rep. Pl. 96.*

Accord is a good Plea in personal *In person* Actions, but not in real. *4 Co. 1. 9. Assent.* Co. 78, 79. nor upon pure Matter of Record.

Yet as to Covenant, it is to be observed, that Accord with Satisfaction is a good Bar in a Writ of Covenant; because the Duty accrues not merely by the Deed, but by a Wrong subsequent, together with the Deed; therefore it is a good Bar in Attaint, *In Attaint.* because this is not founded upon the Record only, but upon the False Oath also.

And in all Actions, where Damages *Where Damages* are only to be recovered, Accord is a good Plea, though the Action be grounded on Deed or Record; but then the Satisfaction ought not to be of any thing whereof the Plaintiff had Property.

But when a certain Duty accrues by *Covenant.* the Covenant at the Time of doing it, Accord with Satisfaction is said to be no Plea; so where no Duty accrues until the subsequent Act or Wrong, there Accord with Satisfaction is a good Plea.

The Trades-Man's Lawyer, and

And in a Writ of Covenant where the Breach is for not repairing the House, Accord between the Plaintiff and Defendant, and Execution of it in Satisfaction and Discharge of the Defect of the said Repairs, is said to be a good Plea.

Note, If part of the Agreement is not performed, the Plea is ill. 1 Cro. 193.

*How to plead
it safely.*

The safest way of pleading an Accord is to plead it by way of Satisfaction, and not of Accord only; and the Defendant need say no more than that he had paid the Plaintiff 5*s.* in full Satisfaction of the same Action, which 5*s.* the Plaintiff receiv'd, &c. 9 Co. 80. See *Brownl. lat.* 180. *Winch. Ent.* 170.

Also it is said, That in all Cases where an * Arbitrement is a good Plea, an Accord with Satisfaction is also; and so generally in all Actions where Damages are only to be recovered. 6 Co. 44. *Blake's Case*. But tho' an Accord is no good Plea without a Satisfaction executed in the Whole; yet it is said, *Arbitrement*, without Execution is, because an Action lieth thereon. See after *Arbitrement*.

As to Payment of Money, it is said, That if the Defendant tender before an Action brought upon a Promise, and the Plaintiff refuse it, he can never recover any

*Tender before
Action.*

any Costs. 8 Co 76. 1 Inst. 203. 9 Co. 79. 1 Roll. 129.

Tender and Refusal is said to be as *Tender* and much as Payment. 1 Vent. 167. *idem* Refusal. 252. But not upon Bond to pay Money, or save harmless from another Bond to pay Money. *Idem* 261.

Also such a Plea of Tender, without setting forth a Refusal, is not good; but it is otherwise if a Place of Payment was appointed, and the Party to receive was not there. 2 Vent 109.

In an Action grounded upon a Pro-^{Payment be-}mise in Law, Payment before the Acti-^{fore}on brought is allow'd to be given in Evidence upon *Non Assumpsit*; but where the Action is grounded upon a special Promise, there Payment or any other legal Discharge must be pleaded. 1 Mod. Rep. 210.

As to Tender of Amends upon a Tre-^{Tender of}spals *Quare clausum fregit*, it is to be ob-^{Amends.}served, That if one would distrain my Beasts *Damage feasant* upon his Ground, and I offer him a competent Recompence before the Beasts be taken, or before they be impounded, this will be a good Bar, and so may be pleaded in the Action of Trespals; but such a Tender after the Beasts are impounded will not suffice. 5 Co. 76.

But yet in all Actions *Quare clausum* ^{Tender and}*fregit*, by the Statute of 21 Jac. 1. c. 16. ^{Disclaimer of}If the Defendant do tender sufficient A-^{Title.}ments before the Action brought, and
A a in

in his Plea to the Action disclaim to make any Title or Claim to the Land, and the Trespas be by Negligence or involuntary; this, if it be proved, will bar the Plaintiff.

Note, There are some few Statutes in Force for punishing Trespassee about the unlawful cutting, stealing or spoiling of Wood, robbing of Orchards, and the like, as 43 *Eliz.* and 15 *Car* 2. for the Abridgments whereof see after. See the late Act for Amendment of the Law, concerning Defendant's bringing Principal and Interest, &c. in to Court.

*By Arbitre-
ment.*

8thly and lastly, A Promise or Contract and other Actions may be gone and discharged by *Arbitrement*, which Thing, because it is much regarded and favoured in Law, yet being attended with several Accidents and necessary Requisites, we will more largely look into it for better Satisfaction.

*Arbitrement
much favoured
in Law.*

Arbitrement is much esteemed and greatly favoured in the Common Law; the End thereof being privately to compose Differences between Parties by the Judgment of honest and understanding Men; and to prevent the great Trouble and frequent Expence of Law-Suits: This therefore being rightly understood and practised, may undoubtedly save Men's Purfes, and procure much Peace and Tranquillity amongst us: But on the other

other hand, through Ignorance and Defect of good Arbitrators, a Man may run into far greater Dangers than he thereby thought to avoid, and so make that his Ruin which is intended for a Remedy: For though it be said that the Power of Arbitrators is such, that they may judge according to their Will and Pleasure, and therefore greater than that of any publick Judge, yet they must keep themselves within their Jurisdiction, and their Awards must be measured by the Rules of the Law. 'Tis true, they are not so tied up to Formalities as the Lawyers are; but notwithstanding there are several Things must be observed to make their *Arbitrations* good and effectual; and therefore we will inquire into such Matters according to the Rules and Methods which the Law directs.

Arbitrement therefore is an Award, *Arbitrement* Determination or Judgment made or *defect* given between Persons in Controversy by the Arbitrators or Umpire, being such Person or Persons as are thereunto elected by the Parties controverting, for the ending and pacifying the said Controversy according to the Submission or Compromise of the said Parties, and agreeable to Reason and good Conscience. *Dyer* 236. 10 *Elizabeth*. *pl. 39.*

It is said to be called an *Arbitrement* Why so called. *ment* either because the Judges elected therein
A a 2

therein may determine the Controversy, not according to the Law, but according to their Opinion and Judgment as honest Men; or else because the Parties to the Controversy have submitted themselves to the Judgment of the Arbitrators, not by Compulsion or Coercion of the Law, but of their own Accord. It is also called an Award of the *French Word Agarder*, which signifies to *decide* or *judge*.

*Incidents to
Arbitrement.*

4 Eliz. Dyer
217. 2.

There are five Things incident to every Award or *Arbitrement*.

1. Matter of Controversy.
2. Submission to the Arbitrators.
3. The Parties to the Submission.
4. The Arbitrators or Umpire.
5. The Manner of the Award, or yielding up their Judgment.

*Things incertain
submitted.*

1. Now as to the Matters which may be submitted to *Arbitrement*, it is to be observed from ancient Authorities, that Things and Actions merely personal and incertain are arbitrabile, as Trespass, &c. though the Submission be not by Deed. *Fixz.* 23. 4 H. 6. 17. b. 10 H. 7. 4. a.

*Things certain
by Specialty.*

But Things certain are not arbitrabile (but when the Submission is by Specialty) if they be not join'd with others incertain, as Debt with Trespass.

Con-

Controversy of Debt alone cannot Debt alone be put into Arbitrement; but Contract not at all. of Debt with another Thing may well be put in Arbitrement. Fitz. Arbit. 23. 8 H. 5. 3. &c.

Some hold that Debt upon Contract Contracts without Specialty may be put in Arbitrement. 45 E. 3. 16. a. 6 H. 4. 6. a. 4 H. 6. 18. a.

Chattels real or mixt, as Charters of Chattels of Lands, are not arbitrable by themselves, if the Submission be not by Specialty. 9 H. 6. 60. 14 H. 4. 24. 3 H. 4. 6.

In real Actions Arbitrement is no Real and mixt Plea. Affians.

In mixt Actions Arbitrement is no Plea if the Submission be not by Deed. 19 H. 6. 37.

In personal Actions on personal Wrongs Arbitrement is a Plea, although Personal Affians. the Submission be not by Deed. 14 H. 4. 24.

In a Controversy concerning the Property of real Chattels an Arbitrement transfers the Property of them according to the Award. 21 H. 7. 29. b.

In Chattels personal, Arbitrement transfers the Property.

In personal Duty grounded upon a Specialty, Plea of Arbitrement is not available. 3 H. 4. 1. b. 8 H. 5. 3. b.

A a 3

Also

No Plea.

Also *Arbitrement* is no Plea when an Action is founded upon a Deed, when it is in the Realty, except in such Cases where Damages alone are to be recovered. 4 Co. 43, 44.

*Of Actions
real, personal
and mixt.*

Note, An Action real claimeth Title of Freehold in Land.

Personal claimeth Debt, Goods, or Damages.

Mixt claimeth not only a real Thing, but Damages for the Wrong.

Chattels real are such as belong not immediately to the Person of the Man, but to some other Thing by way of Dependency, as a Box with Charters of Land, Apples on a Tree, or a Tree itself growing on the Ground, or issuing out of some moveable Thing, as a Lease or Rent.

Chattels personal belong immediately to the Person of a Man, as a Bow, Horse, &c. See *Cowel's Interp. Tit. ejdem.*

Annuity.

Also an Annuity is not arbitrable if the Submission be not by Specialty; that is, by Deed or Bond, wherein the Parties covenant or are bound to stand to the Award; and some say the same of a Freehold; also of Debt upon Arrearages of Account before Auditors, because such Debt is due by Record. 4 H. 6. 17. 3 H. 4. 5. 6 H. 4. 9. 11 H. 4. 12. 14 H. 4. 18, 19. & 24 & 54 E. 3. 16. 12 Aff. pl. 25. 21 E. 3. 15.

*Freehold.**Debt on Record.*

Yet

Yet others hold that a Freehold may be awarded by Deed where the Submission is by Specialty.

And it seems that such things as *Things not in Rerum natura* at the Time of the Submission (though they happen to be before the Award made) are not arbitrable; as if the Submission be of Ewes with Lamb, which after the Submission, and before the Award made, have Lambs: It seemeth the Arbitrators have no Power to make any Award touching the Lambs. *West. Symb. Par. 2. Sect. 33.*

Matters concerning criminal Offences, as Treasons, Felonies, &c. touching the Crime, seem not to be arbitrable; for it is for the Benefit of a Kingdom and Commonwealth that such Offenders be made known and punished. *West. Symb. Par. 2. Sect. 33.*

33. Also Causes matrimonial seem not arbitrable, lest Men should separate those whom God hath joined together. *West. ut supra.*

And generally no Chattels, real or Personal mixt, no Debts by Deeds or Record, no Annuities nor Freeholds, are of themselves arbitrable. But in such Cases, though the Things themselves be not arbitrable, yet if a Man will bind himself to stand to an Award, such Bond is good; and for the Non-performance of

The Trades-Man's Lawyer, and

of the Award the Bond will be forfeited.

Concerning the Submission, and the Circumstances to be regarded therein.

Submission.

Every Submission, is either general or special. *Dyer 217. pl. 6. 4 Eliz.*

General.

General, as of all Quarrels. Actions, Executions, Demands, &c.

Special.

Special, as when 'tis only of certain Matters, Facts and Things, as of a Trespass, or all Actions of Trespass, or of Debt or Detinue, &c.

Submissions are in two manners, either by Writing or by Word.

*Submission by
Word only.*

And note, that upon a Submission by Word only there is no Remedy to enforce the Party to perform the Award; but an Action on the Case for reciprocal Promises will lie; and if Money be awarded, an Action of Debt will lie. *5 E. 4. 7. 1 Keb. 600. 2 Keb. 238. 3 Keb. 64.*

*By Writing
or Deed.*

Those that are by Writing are usually by Obligation, yet they may be by Co-ventants or Deeds between the Parties.

*Absolute and
conditional.*

Also a Submission by Writing or by Word is either absolute or conditional, as *so that*, or *Provided that* the Award be delivered by a certain Day or Time, sealed or unsealed, indented, and the like; and in such Cases the Time, Manner and Matter must be exactly observed, or the Arbitrement will be void.

8 Co.

8 Co. f. 97, 98. *Dyer* f. 22. See after for Precedents.

Note, That if the Submission be with. *Countermand*
out Deed, 'tis said, either of the Parties *by either Party.*
may countermand and discharge the
Arbitrators without Deed; and shall
lose nothing upon Notice to the Arbitrators of such Discharge, except there be divers Persons concerned. But if divers of one Part, and divers of the other Part, submit themselves to *Arbitrement* without Deed, one of them, of *By one only of one Part.*
the one Part, cannot discharge the Arbitrators without the other his Commissions of the same Party; for they were chosen by joint Authority. *Fitz. Arbit. 21. 21 H. 6. 30. a. &c. 28 H. 6. 6.*

And if the Submission be by Deed, *Submission by*
the Discharge must likewise be by Deed; *Deed.*
and 'tis said, that in such Case, one of the Parties alone cannot countermand the Arbitrators. *Finch 49 E. 3. 9. Fitz. Arb. 22.*

But if the Submission be by Bond (as *Submission by*
most commonly it is, tho' by some not *Bond.*
thought so convenient; for that thereby the Parties may hazard the Penalty of the Bond for a Trifle or small Matter) though afterwards countermanded; yet, it is said, the Bond shall be forfeited. *Bro. Tit. Arbitrement. 8 Co. 82.*

Con.

3. Concerning Parties to the Submission, &c.

Persons submitting.

The Parties submitting must be two at the least, the Plaintiff and the Defendant; and sometimes there be two or more of a Side or Party. *Dyer* 217. 4 *Eliz.*

What Persons may submit.

And it is to be observed, that all Persons, both male and female, may submit to *Arbitrement*, except they be prohibited by Nature or by Law.

Hindred by Nature.

Infants, Madmen, Lunatics and Idiots; also such as are Dumb, Deaf or Blind by Nature, are hindred; but if it be by Chance, and they can write and read, it is said, they may well by Writing compromit or submit to *Arbitrement*.

Hindred by Law.

Women Covert, without their Husband, and Persons civilly dead, as Monks, Fryars, Canons, professed Nuns, &c. are hindred by Law. 9 *Ed.* 3. 28. 14 *H.* 8. 6.

Compelled by Threats.

So such as are compelled thereto by Threats and Imprisonment; for in Submission the Consent ought to be free. 8 *Ass.* 25. 7 *Ed.* 4. 21.

Attainted.

Also such as are attainted of Felony or Treason, and Persons outlawed or waved in personal Actions; for they have no Goods. 36 *H.* 6. 26. 16 *H.* 6. 47. 21 *H.* 7. 7.

Joint Power.

So they that have joint Power with others, cannot singly submit, in relation

to

to such Power, without their Fellows. As a Dean without a Chapter; a Mayor without his Commonalty; the Master of a College or Hospital without his Fellows; and so of other Societies and Guilds. 21 E. 4. 13.

It is said, one may submit by a Deputy. 4 Eliz. 217.

The Husband may submit himself to *Husband and Wife.* an Award for himself and his Wife; for the Chattels of which he had Disposition in Right, and by Reason of his Wife, and it shall bind his Wife; and upon such a Submission, Money awarded to be paid to him and his Wife, is good. *Trin.* 16 Car. in B. R. 21 H. 7. 29. b.

If divers on the one Part have done a *Joint Trespass* or *Trespas* to another, and he *passer.* to whom the Wrong is done, and one of the others, submit themselves to an Award; upon an Award made, the others, nor being Parties in the Submission, shall have Advantage in Extinction of the Trespas. 7 H. 4. 31. b. 20 H. 6. 12. a. and 41. a.

If divers of the one Part submit themselves to the Award of certain Persons, *Joint and several.* and divers of the other Part, the Arbitrators have Power to make an Award for Matters between them jointly; and so for Matters between them severally.

2 R. 3. 18. b. 21 H. 7. 29. b.

If divers of the one Part, and of the *Divers on each other Part, submit themselves to the Award* *side submit.* other Part, submit themselves to the Award

ward of the one who makes an Award betwixt some of the one Party, and some of the other Party, and not betwixt them all, and says not any thing in his Award concerning the other; yet such an Award has been held good. *1 Keb. 886.*

Several Precedents or Forms of Submission by Bond and Condition.

A single Bond of Arbitration of all Actions without Exceptions, and without an Umpire.

NOverint universi per præsentem me A. B. de C. in Com. D. Gen. teneri & firmiter obligari E. F. de C. prædict. Gen. in viginti libris bonæ & legalis monetæ Angliæ Solvend. eidem E. F. aut suo certo Attornato, Executoribus vel Assign. suis, Ad quam quidem solutionem bene & fideliter faciend' obligo me, Heredes, Executores & Administratores meos firmiter per præsentem sigillo meo sigillat' dat. primo die Septembris Anno Regni Domine Annæ Dei Gratiæ Magnæ Britannię, Franciæ, & HiBerniæ Regine Fidei Defensor' &c. Septimo, Annoque Domini, 1707.

Note, You may make such reasonable Penalty as you think fit, according to the Circumstances omitted.

Or in English thus :

KNOW all Men by these Presents, That I A. B. of C. in the County of D. Gent. am held, and firmly bound unto

unto E. F. of C. aforesaid, *Gent.* in Twenty Pounds of good and lawful Money of *England*, to be paid to the said E. F. or his certain Attorney, his Executors, Administrators or Assigns; to which Payment, well and truly to be made, I bind my self, my Heirs, Executors and Administrators, firmly by these Presents; Sealed with my Seal, dated the first Day of *September*, in the sixth Year of the Reign of our Sovereign Lady, *Anne*, by the Grace of God, of *Great Britain, France and Ireland*, Queen, Defender of the Faith, &c. *Annoque Domini*, &c. 1708.

The Condition of this Obligation is *The Condition.*

such, That if the above bounden A. B. His Heirs, Executors and Administrators, for his and their Parts and Behalves shall, and do, in all things, well and truly stand to, obey, abide, observe, perform, fulfil and keep the Award, Order, Arbitrement, Judgment, final End and Determination of G. H. and J. K. both of C. aforesaid, in the said County of D. *Gent.* [naming the Arbitrators, their Places and Additions] Arbitrators indifferently chosen, elected and named, as well on the Part and Behalf of the above bounden A. B. as of the above named E. F. to arbitrate, award, order, judge and determine of, for, upon, and concerning all and all manner of Action and Actions, Cause and Causes of Actions, Suits, Bills, Bonds, Specificaties,

alties, Judgments, Executions, Quarrels, Controversies, Trespases, Damages and Demands whatsoever, at any Time heretofore had, made, moved, brought, commenced, sued, prosecuted, done, suffered, committed, or depending by or between the said Parties; so always as the said Award, *Arbitrement*, Order, Determination, final End and Judgment of the said Arbitrators, of, for, or upon the Premises, be made and given up in Writing, under their Hands and Seals, ready to be delivered to the said Parties in Difference (or such of them as shall desire the same) on or before the first Day of *October* next ensuing the Date above-written [Or otherwise, as the Day agreed on will be] Then this Obligation to be void and of none Effect, or else to stand and remain in full Force and Vertue.

Sealed and delivered
in the Presence of

Note, That each Party must give a Bond unto the other, Word for Word, only changing their Names as Occasion requires.

*The Award to
be in Writing.*

A Bond of Arbitration without Exceptions from two to two, and without an Umpire.

N Overint universi per presentes nos A. B. de C. in Com. D. Gen. & E. F. de C. prædict. in Com. prædict. Gen. teneri & firmiter obligari G. H. de C. prædict. in Com. prædict. Gen. & J. K. de C. prædict. in Com. prædict. Yeoman, in centum libris bonæ & legalis monete Angliæ solvend. eisdem G. H. & J. K. seu eorum alteri vel eorum certo Attornato Executoribus, Administratoribus vel Assignatis suis. Ad quam quidem solutionem bene & fideliter faciend. obligamus nos & utrumque nostrum per se pro toto & in solido Hæredes Executores & Administratores nostros & utriusque nostrum firmiter per presentes sigillis nostris sigillat. dat. tricesimo die Septembr. Anno Regni Domine Annæ Dei gratia Magna Britannicæ, Franciæ & HiBerniæ Reginæ Fidei Defensor, &c. septimo, Annoque Domini 1707.

Note, if the Bond be to

three you say,

seu eorum alicui.

† If three be

bound you say,

obligamus

nos & quemli-

bet nostrum.

|| If three be

bound you say,

cujuslibet no-

strum.

The like in English.

K NOW all Men by these Presents, That we A. B. of C. in the County of D. Gent. and E. F. of G. aforesaid, in the County aforesaid, Gent. are held and firmly bound to G. H. of C. aforesaid, in the County aforesaid, Gent. and J. K. of C. aforesaid in the County aforesaid.

Note, The

must name the

Parties, their

Places and Ad-

ditions right.

aforesaid Yeoman, in an hundred Pounds of good and lawful Money of England to be paid to them the said G. H. and J. K. or to one * of them or there certain Attorney, their Executors, Administrators or Assigns: to which Payment well and truly to be made, we bind our selves, and † each of us by himself for the whole intirely, our Heirs Executors and Administrators, and the Heirs, Executors and Administrators of || each of us firmly by these Presents, sealed with our Seals, dared the 30th day of *Septemb.* in the 7th Year of the Reign (&c. as before in the other Bond.)

* Note, when a Bond is made to three you say or to any of them.

† When a Bond is from three, you say, and every of us.

|| When three are bound, you say of every of us.

The Bond ought not to bear Date of any Day that is not come, though if you happen to date it of a Day that is past, it may serve.

The Condition.

The Condition of this Obligation is such, That if the above bounden A. B. and E. F. their Heirs, Executors and Administrators, for their and every of their Parts and Behalves. shall and do in all things well and truly stand to, obey [&c. as in the other Condition till you come to] Arbitrators indifferently named, as well on the Part and Behalf of the above bounden A. B. and E. F. as of the above named G. H. and J. K. to arbitrate, award, order, judge, &c. as in the other till you come to) by or between the

passes, Damages and Demands whatsoever, at any Time heretofore had, made, moved, brought, commenced, sued, prosecuted, done, suffered, committed or depending, by or between the said Parties; so always as the said Award, *Arbitrement*, Order, Determination, final End and Judgment of the said Arbitrators of, for, or upon the Premises be made or drawn up in Writing * under their Hands and Seals, and delivered or ready to be delivered to the said Parties, or such of them as shall desire the same, on or before the first Day of *May* next ensuing the Date of these Presents; † then this Obligation to be void, and of none Effect, or else to stand and remain in full Force and Vertue.

* Note, You may say a Writing indented, (&c) That so there may be two Parts.

† As to the Clause for an Umpire, in case the Arbitrators cannot agree by the same Time, after the Words (*next ensuing the Date of these Presents*) add as followeth;

For an Umpire. And if the said Arbitrators shall not make and draw up their Award in Writing, as aforesaid, on or before the first Day of *May*, if then the said *A. B.* his Executors, Administrators and Assigns, and every of them, do and shall stand to, abide, observe, perform and keep the Award, Umpirage, final End and Judgment of *M. N.* of *O.* in the said

faid County of *F. Esq;* Umpire indifferently elected and chosen betwixt the said Parties for ending and composing of all the Differences aforesaid, so as the said Umpire do make and draw up his said Award, Umpirage and Determination in Writing (indented) under his Hand and Seal ready to be delivered to the Parties, or such of them as shall desire the same, on or before the tenth Day of the said Month of *May* next ensuing the Date of these Presents, then this Obligation to be void and of none Effect, or else to stand and remain in full Force and Vertue. See at the latter End of this Chapter for the late Act of Parliament, to make the Submission a Rule of Court.

If a Submission be concerning a Title of Land, *Mr. West* in his *Symb.* Part 2. Sect. 40. advises to word it as follows,

As well of, for and concerning the Right, Title, Interest, Use, Possession, and Demand, of and in the Manor of *S.* with the Appurtenances in *S.* in the said County of *Y.* and all Lands, Tenements and Hereditaments, with the Appurtenances in *S.* aforesaid in the Occupation of the said *A. B.* and his Assigns, as of and upon all Actions, Trespasses, Suits, Quarrels, Debts, Duties, Debates, Grievs, Inconveniencies and Demands, had, moved, stirred, or depending between the said Parties

B b 2

con-

concerning the said Manor, Tenements, and Premises, or any Part thereof; and also if the said *A. B.* before the * Feast of *P.* now next coming, do shew unto the said Arbitrators all such Writings as he hath concerning the said Manor and Premises at such Time and Place as the said Arbitrators shall appoint for the Sight thereof, — So always that, (&c. as in others) That then, &c. as before, in others.

* Or such other Time as may be thought convenient.

And though the Title of Land is (as aforesaid) of its self not arbitrable, yet being by Bond, such Bond will be forfeited for not performing the Award. 22 *H. 6.* 46. See afterwards for a Clause to make the Submission a Rule of Court, according to a late Act of Parliament.

Bond forfeited.

4. *The Duty of the Parties after Submission.*

The Election and Submission being thus made, in the next Place it is the Duty of the Parties to come before the Arbitrators, and to shew their Grievances, and the Arbitrators ought to hear them, and to judge accordingly, or otherwise they are no good Judges.

The Arbitrators having heard their Grievances and Matters, and agreed upon their Award, the next Thing is the publishing or notifying of such Award.

Where

Where by the Submission it is appointed or conditionally provided, that the Award shall be delivered to the Parties, &c. it is then no Arbitrement in Law before it be delivered in Deed.

But if the Submission be, that the Award shall be delivered to the Parties, &c. before such a Day, requiring the same, and no certain Day limited when it ought to be delivered, then the Parties are obliged to take Notice of the Award at their Peril.

And now all Submissions being usually by Bond conditionally, so as the Award be made in Writing, and ready to be delivered to the Parties, or such of them as shall require the same, &c. in this Case it is clearly resolved and agreed, that the Parties having so bound themselves, are obliged to take Notice of the Award at their Peril. 18 Ed. 4. 18. a. 4 Coke 82. 8 Coke f.

9, 92.

But if the Submission be, that the Arbitrement shall be delivered before such a Day, it may as well be delivered by Word as by Deed; if the Submission be not that it shall be delivered by Deed or Writing. 5 El. 218. b. 5.

And if the Submission be by Deed, and the Time past in which the Arbitrement ought to be made, the Parties cannot prorogue the Time over to make the Award without a new Submission

B b 3 to

Delivery of the Award.

Where the Parties must take Notice at their Peril.

General Rule.

Delivered by Word.

By Deed.

Day past, and new Submission.

to that Purpose; and whatsoever the Arbitrators do award after the Time appointed, is void. 49 E. 3. 9. a.

*Time pre-
rogued.*

But if the Submission be without Deed, as it may, the Parties may pro-
rogue the Time which was given to
make the Award. *Fitz. Agard. 22.*

*Arbitrators
cannot make
two Awards.*

Also if the Arbitrators make their
Award between the Parties one Day,
and give their Judgment therein, they
cannot make another Award between
the Parties another Day, albeit the Time
given by the Submission is not expired.

Also it is said an Arbitrement cannot
be made Part at one Time, and Part at
another, albeit it be within the Time of
Submission.

But this is meant where it is decla-
red or pronounced to the Parties by
Pieces or Parcels.

For the Arbitrators may discourse be-
twixt themselves, and agree upon one
Thing one Day, and of another Thing
another Day, and in the End make one
intire Award of the whole, and it is
good.

*But may have
several Dis-
courses.*

If the Arbitrators award one Thing
on one Part, and before they can agree
of their Award for the Remainder, the
Time given by the Submission expire,
their whole Award is void. 23 H. 6.
28. 39 H. 6. 10, 12, &c.

§. Some

5. Some Forms and Precedents of Awards and Umpirage.

A general Form of an Award upon a Submission by Bond.

TO all People to whom this present Writing of Award indented shall come, *A. B.* of &c. and *C. D.* of &c. Arbitrators indifferently chosen, elected and named, by and between *E. F.* of, &c. and *G. H.* of, &c. to arbitrate, *award, order, judge and determine, of, for, upon and concerning all and all manner of Action and Actions, Cause and Causes of Actions, Suits, Bills, Bonds, Specialties, Judgments, Executions, Extents, Quarrels, Controversies, Trespases, Damages and Demands whatsoever, at any Time before our said Election, had, made, moved, brought, commenced, sued, prosecuted, done, suffered, committed or depending, by or between the said Parties, as by the several mutuals Bonds or Writings obligatory of the said Parties, with the Conditions thereof, Relation thereunto had, more fully and at large it doth and may appear Now know ye, that we the said Arbitrators, in Pursuance of our said Election, and the Power given us thereby, for the Ending of all the Matters to us therein submitted, and for the future Peace and Quiet of the said Parties

Note, it need not be indented, unless the Bond of Submission doth so direct.

Recording the Award in the Condition of the Bond.

The Trades-Man's Lawyer, and

Parties concerning the Premises, do arbitrate, award, order, judge and determine thereupon as followeth, First, &c.——In Witness whereof, we the said Arbitrators have to these our present Indentures of Award, interchangeably set our Hands and Seals, the first day of October, Annoq; Domini, 1708.

The Form of an Umpirage.

TO all People to whom this present Writing shall come, I A. B. of C. &c. Umpire indifferently chosen by E. F. of, &c. and G. H. of, &c. having deliberately heard and understood the Grievs and Allegations and Proofs of both the said Parties, and willing, as much as in me lieth, to set the said Parties at Unity and good Accord, do by these Presents arbitrate, award, order, deem, decree and judge, that the said E. F. his Executors or Administrators or Assigns, or some of them, do well and truly pay or cause to be paid unto the said G. H. his Executors, Administrators or Assigns, at or in the dwelling House of J. K. situate in L. in the said County of M. the full Sum of ten Pounds of lawful Money of England on the first day of May next ensuing. the Date hereof; and that upon Payment thereof, either of the said E. F. and G. H. shall seal, subscribe, and as his

his several A&t and Deed, deliver unto the other of them a general Release in Writing of all Matters, Actions, Suits, Causes of Actions, Bonds, Bills, Covenants, Controversies and Demands whatsoever, which either of them may, might, or in any wise ought to have of and against the other of them, by Reason aforesaid, or means of any Matters, or Cause or Thing whatsoever, from the Beginning of the World until the 24th Day of *August* now last past. To the Day of
In Witness whereof I have hereunto the Date of the Bonds of Submission, and no further.
set my Hand and Seal the first Day of *October*, in the seventh Year of the Reign of our Sovereign Lady, *Anne*, of Great Britain, France and Ireland, Queen, Defender of the Faith, &c. Annoq; Domini, 1708.

The Form of a Release to be given, if so awarded.

KNOW all Men by these Presents, That I, E. F. of, &c. have remised, released, and for ever quit-claimed, and by these Presents, do for me, my Heirs, Executors and Administrators, remise, release, and for ever quit-claim, unto G. H. of, &c. his Heirs, Executors and Administrators, all and all manner of Actions, Cause and Causes of Actions, Suits, Bills, Bonds, Writings obligatory, Debts, Dues, Duties, Accounts, Sum and Sums of Money, Judgments, Exc-

Executions, Extents, Quarrels, Controversies, Trespases, Damages and Demands whatsoever, which against the said G. H. I ever had, now have, and which I, my Heirs, Executors or Administrators, shall or may have, claim, challenge or demand, for or by Reason or Means of any Matter, Cause or Thing whatsoever, from the Beginning of the World until the * 24th Day of August now last past. In witness whereof I have hereunto set my Hand and Seal this first Day of November, in the seventh Year of the Reign of, &c. *Annoq; Domini, 1708.*

*Until the * Day
of the Submission,
as in the
Award.*

Sealed and Delivered
in the Presence of

*Note, The Release ought to be to the
Time of the Submission. See after.*

*What Things are chiefly to be regarded in
Awards, &c.*

Further it is to be observed, That every Award, *Arbitrement* or Umpirage, ought to be made according to the Submission:

As to the Persons.

1. And first, as to the Persons; the Award, it is said, ought not to be of a Thing to be done by a Stranger, nor that the Parties shall stand to the Award of a Stranger; for such Power cannot be assigned, unless such an Award had formerly been made by a Stranger,

*Not of a Thing
to be done by a
Stranger.*

Stranger, between the said Parties. 5
Co. Salmon's Case. 39 H. 6. 10.

Some have held, that an Award of an
 Act to be done by Advice and Counsel,
 may be good; but not, if by Advice of
 the Arbitrator himself. 8 *Ed.* 4. 11. 14
E. 4. 1, &c.

*By Advice and
 Counsel.*

See after, concerning Payment in the
 House of a Stranger; and concerning
 Payment at the House of a Stranger;
 also, concerning Payment at or in the
 House of a Stranger.

*Strangers
 House.*

2dly. As to the Things submitted.

If the Submission be of all Things in
 Variance betwixt the Parties, and the
 Award is of Things not in Variance;
 such Award is void. *Pl. Com.* 396. a.

*Submission of
 one Thing. A-
 ward of ano-
 ther.*

So, if the Submission be of the Right
 and Interest of Land, and the Award
 is concerning the Profits only of the
 Land. *Dyer.* f. 242.

So, if the Submission be of the Ma-
 nor of D. and the Award is of the Ma-
 nor of S.

So, if the Submission be of all Causes
 till that Time, and the Award is of a
 Release of all Causes to the Time of
 the Award; especially if any new Causes
 be shewn.

*All Causes to
 the Time of the
 Award.*

But if the Award be made of and
 concerning the Premises; and that such
 a Day to come, the one Party shall pay
 the other 10 l. and that the Parties
 shall make general Releases; this Re-
 lease

Nota.

lease shall be supposed only of the Causes submitted. 8 Co. f. 98.

*Award of a
Thing Incident
or Accessory,
&c.*

The Award also may be made of a Thing incident or accessory; as if it be of Title and Possession of Land, the Award may be made also of the Evidences and Charters concerning the Land. *Mich. 9 Jac. Tiderby and Tiderby.*

Note also, that it is said, That if the Submission is of Things personal, the Arbitrators may award, that one of the Parties shall do an Act, which is of a Thing real, in Satisfaction of a personal Wrong. Also,

If the Submission be of a Thing real, the Arbitrator may award Satisfaction to be made of a Thing personal. 9 E. 4.

44.

The Award for more. If an Award is made for more than is submitted; it is good for that Part which is submitted, and void for the Residue.

Stranger.

So where the Award is, that the Parties shall do such Acts, and a Stranger such Acts, the Award may be good as to the Parties, though void as to the Stranger. *Mich. 29 Eliz. More and Bedel. 14 H. 8. Lee's Case.*

Award of less.

Where two or three Things are put in *Arbitrement* jointly, and an Award is made of Part, and not of the Whole, it is void. 39 H. 6. 9.

But if the Submission be of all Actions real and personal, and an Award is made

made of all Actions personal only; this has been adjudged to be good. 19 H. 6.

And though there are many Matters in Controversy, yet if one only be shewn to the Arbitrator, 'tis said, he may make an Award of this; for the Arbitrator is a Stranger to the Particulars, and the Parties, who are privy, ought to shew the Causes of their Controversy to him, or otherwise most Arbitrements might be avoided by the Parties Concealment. 8 Co. f. 98.

Where a Submission is without Deed, ^{Submission} an Award may be made of Part of the Things only, and good; so if it be with Deed and Submission either general or special, and not conditional.

But where the Submission is general ^{Submission by} or special by Deed conditional, with Deed. the Words, *Provided that, or, so as the said Award concerning the Premises be made in Writing, &c.* In such Case the Award must be made of all the Matters submitted. 8 Co. f. 98. Dyer 216, 242.

3dly. As to the Circumstances.

It is to be observed, that upon Submissions conditional, as to Writing, ^{All Circumstances to be} Sealing and Delivery, &c. all the Circumstances must be observed and awarded of, at or before the Day appointed, otherwise it will be void. Dyer 243. 21 H. 8. 42. 8 E. 4. 11. 8 H. 6. 18. 4 Co. 103. Where

*Award totally
void.*

Where an Award is of one single Matter only, or of many, and all out of the Submiffion, fuch Award is totally void.

But where an Award is of one Thing only, or of feveral Things, Part with- in the Submiffion and Part out; there the Award is held void only as to that which is out, and good for the Re- mainder.

*Award void on
one Part is void
on both.*

Yet though it may be void in Part and good is Part, it cannot be totally void only as to one of the Parties, and good againft the other; for if it be void againft one, it is void againft both: For an *Arbitrement* ought to be of both Sides, and equally binding. 22 H. 6. 46. 5 Co. 77. 8 Co. 98. 10 Co. 31.

And the Law is held the fame as to thefe Things where the Parties are tied by Promise only.

*No Forfeiture
of Bond upon
an Award to-
tally void.*

Now where an Award is totally void, there a Bond can never be forfeited for the Non-performance of it; for fuch an Award is as if no Award; and the Law requires not the Obfervation of that which is void. 10 Co. 31. Keil. 175.

*Aliter where
void in Part
only.*

But where an Award is void in Part only, there the Bond may be forfeited for not obferving the Award; efpecially for that which is contained in the Sub- miffion, though not for that which is out; and therefore if the Breach be af- figned in that Part which is void, the Action will not lie. But a Breach may be

be assigned for that which is within the Submission, and the Bond will be forfeited for the Non-performance of it. 18 E. 4. 22, 23. 10 Co. 131.

41bly. An Award ought to be certain.

If the Arbitrators award that one of *Certainty*. the Parties shall enter into a Bond to the other, and do not award in what Time, such Award is void for the Uncertainty. 5 Co. 77, 78.

And where an Award is of Things within the Submission, and is uncertain in any Part that concerns a Party to the Submission, it is void in the Whole. 8 Ed. 4. 1. *Hill.* 15 Car. in B. R.

Yet a small Variation is not material; as if an Award be, that one of the Parties shall discharge the other of a Bond of the Penalty of 100 l. or thereabouts; this was held a sufficient Certainty. *Pasch.* 15 Car. in B. R.

Also an Award that is seemingly uncertain, and yet may be reduced to a Certainty, is good enough; as that the Defendant shall pay so much during the Continuance of such a Lease, naming it, &c. Here the Payment of the Money is referred to the Continuance of the Lease, which is certain, and therefore the Award good. *Pasch.* 5 Jac. in B. R. *Girling* versus *Gosnold.* Hob. 68. *Dyer* 242.

51bly.

Equality.

5thly. An Award must be equal, and appoint either Party something beneficial, in Appearance at the least ; for an *Arbitrement* is no Plea in Trespass, if nothing be awarded to the Plaintiff for Amends. 43 E. 3. 28.

Trespass.

In Trespas of Goods taken it is not good pleading in Award, that the Defendant shall retain Part of the Goods and the Plaintiff shall have the rest.

No Plea.

So in Debt, to plead an Award, that the Plaintiff should have one Moiety and the Defendant the other, or should pay Part and keep Part, this is no Plea. 17 E. 3. 6. 45 E. 3. 16. 10 H. 4. Fitz. Arbit. 19.

Delivery of the Plaintiff's own Goods, no Satisfaction.

In Trespas for taking away of Goods, the Defendant pleaded an Award, that because the Defendant had taken away the Plaintiff's Goods, he should therefore carry and redeliver them to the Plaintiff, which he had done ; this was held naught ; for Redelivery of the Plaintiff's own Goods could be no Satisfaction, much less the Redelivery of Part of them. 45 E. 16. 2 H. 5. 2. d. 12 H. 7. 14, 15.

Aliter to carry them for the Plaintiff's Benefit.

But it had been good if the Defendant had been awarded to have carried the Goods to such a Place for the Plaintiff's Benefit. 2 H. 7. 2. 14 H. 4. 14.

Award on one Side only.

If two submit themselves to *Arbitrement* of all Trespases, &c. between them ; and it is awarded, that the one shall

shall make Amends to the other, and nothing is awarded for the other's Benefit, this Award is void, being but on one Side. 7 H. 6. 40. 39 H. 6. 9. 22 E. 4. 25.

So if it were that the one only shall go quit against the other. 19 H. 6. 36. 20 H. 6. 18, 19. *Hob. 68.* for such *Arbitrement* are only on one Side.

But where there is an Acquittal or exprefs Satisfaction on both Sides, or on one Side only with an implied Discharge on the other, the Award in such Case may be good. See after.

A Quart of Wine, or some such *Small Recompence* in Satisfaction of the pence good. Wrong, may be good.

So for that the one has done more *A Penny to be* Trespas to the other than the other paid. to him, he shall pay the other a Penny in Satisfaction, and that he shall be quit against him. 19 H. 6. 37. 20 H. 6. 18. &c.

An Award for that the Wrongs done *Equal Wrong.* by the Parties each to other are equal, they shall therefore be quit each against the other, is said to be good. 20 H. 6. 19. 21 H. 6. 9. *Dyer 356.*

Yet 'tis said to be otherwise, if the Submission was by Word of Mouth. 9 E. 4. 8. *Quere.*

Where divers of the one Party and the other submit themselves to Award, and the *Arbitrement* is, That one of the Parties shall pay to one of the

C c

the other Party so much, without saying any Thing of the others, it is said to be a good Award, for that the others, it may be, have no Cause to have any Thing. 22 E. 4. 25. b.

*Damage for
Things uncer-
tain.*

It is said, That Damage for Things uncertain lies in the Discretion of the Arbitrators, but not of Things certain, as Debt, &c. 8 E. 4. 121.

*Implied Dis-
charge.*

Again as to an implied Discharge,

If it be awarded, That the Defendant shall pay 10*l.* for a Trespass, it is good. 22 E. 4. 25.

So that the Defendant shall pay a Penny to the Plaintiff in Satisfaction of all Manner of Actions, if the Defendant shew that he hath paid it, it is a good Bar. 22 H. 6. 39. Because these imply a Discharge to the Defendant.

*No Provision
made for a
Discharge.*

But if the Award be that he that is bound in a Bond shall pay the Debt, this does not imply a Discharge; for Payment in such Case without Acquittance is no Discharge to him. *Hob.* 68. and therefore the Award void unless there be Provision for a Discharge. See 8 Co. 98.

Intermarriage.

An Award that in Satisfaction of the Wrong, the Parties shall intermarry, is no good Award, for it is no Satisfaction; also if it be that the Parties shall account. 9 E. 4. 44. 30 H. 6. *Fitz.*

Account.

Abr. 27.

6thly.

6^{thly}. The Performance of an Award *As to the Performance, it must be possible and lawful in the Parties Power, without the Aid of others.*

If an Award be to do a Thing impossible, as to turn the River of *Thames* to run over the Cellars of *Westminster* within a Day, or to pay a Sum of Money at a Day already past, or to release all Right in such a Manor, where in Truth there is no such, and the like; such an Award is void, and the Bond not forfeited. 8 *Ed.* 4. 6. 10 & 12. 21 *E.* 4. 38, 39, 48.

Otherwise 'tis void.

But if the Thing seem feasible and of a Thing possible, though very hard and difficult, yet the Award may be good, and the Party ought to perform it. As,

That I shall at such a Time go to such a Place, and bring from thence such a Thing as is not there; in this Case, I ought to buy the Thing and convey it to the Place, and bring it from thence, *Œc.* 9 *H.* 7. 15.

If the Award be, That I shall pay 1000 *l.* within an Hour, *Œc.* I am bound to do it. 8 *Ed.* 4. 1. though perhaps I have not 10 *l.* 19 *E.* 4. 4. and so of the like.

Again, an Award ought to be lawful, therefore that which is expressly forbidden by the Law is void; as if it be awarded that the Defendant shall

kill

C c 2

kill, rob, steal, forge a Deed, or the like. *Co. Litt.* 206. *b* 42 *E.* 3. 6.

Again, the Performance ought to be within the Parties Power, without the Aid of others.

*Ought to be in
the Parties
Power.*

If the Award be, that I shall make a Stranger pay 20 *l.* to the Plaintiff, it is void, for I cannot force him to do it. 8 *E.* 4. *f.* 2. 17 *Ed.* 4. 5. 22 *H.* 6. 46.

But where I may do the Things awarded my self, or force it to be done, the Award is good. 5 *H.* 7. 22. 21 *E.* 4. *f.* 40. and 17 *Ed.* 4. 5. For it is held a general Rule, That where I may do the Thing awarded my self without the Aid of another, or it lies in my Power to enforce the doing thereof by others; in such Case the Award is good, and I am obliged to perform it.

Attainable.

7ibly. There ought to be a Means by Law to attain unto the Thing awarded, if the Submission is without Specialty.

*Upon Payment,
and a general
Release.*
If in Trespass an Award be pleaded that one Party should pay a Sum of Money, and release to the other all Actions of Trespas, &c. and that after the other should release to him, this is not good; because if the one pays the Money and releases, he cannot after force the other to release to him. 22 *H.* 6. 12, 18. 19 *H.* 6. 37, 38.

Yet it may be a good Plea, if the Party pleading shews that he has performed his Part, as appears after.

If the Defendant, in an Action of Trespass, pleads an Award, that he should be bound to the other by a Day not yet come, this will be no Bar, for if it should, the other would be without Remedy to compel him to make the Bond. *5 E. 4. 7. 45 E. 3. 16.*

But if the Submission were by Bond, though such a Plea as above will be no Bar to the Action, because there is no Means to enforce the making of a Bond, Release, or other collateral * Matter; yet if the Party do not make it, he will thereby forfeit the Penalty of his Bond.

Where the Submission is without Bond, if the Award be for Payment of Money at a Day to come, it is good, because an Action of Debt will lie for the Money upon such Award; and if it be not paid the Party, if he please, may resort to his first Action.

Also if an Award be to do a collateral Thing, as make a Release, &c. for which there is no Remedy; yet if it appear to be executed, the Award will be held a good Plea. 19 H. 6. 37, 38.

And if the collateral Thing appear not to be executed, yet if the Submission be by Bond, the Bond will be forfeited.

C c 3

To be bound by a Day not yet come.

Bond forfeited.

** Note, Any other Thing besides Payment of Money is called a collateral Matter. Upon Submission without Bond. Resort to first Action.*

Award executed by a collateral Action.

forfeited for Non-performance of the Thing awarded. 9 E. 4. 44. a.

Pleadings.

Again observe, 1. That where an Award is for Payment of Money, for which there is Remedy, and the Day of Payment not past, in such Case an Award pleaded will be a good Bar to an Action. 20 H. 6. 18, 19. 2 H. 4. 4. 9 E. 4. 51. 19 E. 4. 8. 45 E. 3. 16.

Day of Payment past.

2. Where the Day of Payment is past, it will be no Bar to plead an Award without Pleading the Payment by the Party. 20 H. 6. 12.

Where 'tis past.

3. Where the Day of Payment is past, and though it appear that the *Arbitrement* is not executed, yet if there be no Default in the Defendant, it may be a good Bar to plead an Award. 20 H. 6. 18. 2 H. 4. 1.

Where 'tis past and no Default in Defendant.

4. Where an Award is for doing a Thing for which the Party hath no Remedy (though the Day be not come in which the Thing ought to be done) in such Case it will be no Bar of an Action to plead the Award. 19 H. 6. 37. 5 E. 4. 7. 7 H. 4. 41.

Where the Party has no Remedy.

Yet Arbitrators may award an Act to be done for the better Performance of their Award, as to enter in to Bond, &c. 19 H. 4. 1. 8 H. 6. 18.

Award to enter into Bond.

8tibly. An Award ought to be final.

*Award ought
to be final, &c.*

This is to be understood with Respect to what is said before, that though an Award may be good of Part of the Things only submitted, yet it must be final as to that Part, or else it will be void.

As if an Award be, That the Parties shall be nonsuit one against the other, in Actions depending betwixt them; suited for after Nonsuits, the Parties may begin again, and thus there is no End of the Controversy. 19 H. 6. 36, 37. 8 E. 4. 10.

*Award for
each to be nonsuited.*

And so it is where the Award is of one Side only, or is incertain. 5 Co. 78. only.

And 'tis a general Rule, That the Law doth reject all *Arbitraments* which leave the Matter in Controversy, in Suspence, or un concluded. 8 H. 4. 12. 41, 42 El. Emery cont. Emery in C. B.

If each Party submitting to the Award hath Power by the Award to compel the other Party either by Law or Equity to perform the Award, the Award is good enough although the Party be thereby put to his Action. Mich. 24 Car. B. R. Praes. Reg. 28.

*Where equal
Remedy is com-
pel.*

How an Arbitrement shall be expounded and intended, and of the Effect and Performance thereof.

Every Arbitrement is a Judgment.

Every *Arbitrement* is a Judgment. And there is Diversity where a Man is judged by Authority of the Law, and by Election of the Party himself; for a Judge of Record does not give Judgment against the Parties, if so be they are not called before him by Process of Law; but otherwise it is of an Arbitrator who is Judge between the Parties. 8 E. 4. 1, 2, 10, &c.

The Intent of the Arbitrators.

Every *Arbitrement* ought to be expounded and intended according to the Intent of the Arbitrators, and not literally. 10 Co. f. 57. b.

But if the Intent of the Arbitrators will not stand with the Law, then the Parties shall perform it according to those Words in such Sense as agrees with the Law.

Agreeing with the Law.

And *note*, It hath been held that an Averment shall not be allowed to shew the Intent of the Arbitrators, if it be not expressed in the Award, either directly or by Circumstance. *Dyer* 242.

No Averment to shew such Intent.

By *Arbitrement* the Controversy passes into a Matter judged of. 49 E. 3. 3. a. 20 H. 6. 41. a &c.

And

And therefore where the Party brings *Bar that Day* his Action for the Wrong done him, *of Payment not* 'tis a good Plea, that he submitted himself to the *Arbitrement* of such and such, who awarded, that he should pay so much, &c. but the Day of Payment of it is not yet come. 20 H. 6. 12. b. 40. a. b. 28 H. 6. 12. 6 H. 7. 11.

But if the Day of Payment be passed, *Day passed and* he ought to shew that he tendered the *Tender pleaded.* Money at the Day, and that he is yet ready to pay it, &c. 8 H. 6. 25. b. 16 E. 4. b.

For *Arbitrement* by which the Arbitrators award, that one of the Parties shall pay Money, does give an Action. 5 E. 4. 7. a. 16 E. 4. 9. a. *Fitz. Nat. Brev. G.* 121.

And it is now held, that Debt upon an Award by Word of Mouth is within *Statute of Li. mitigation.* the Statute of Limitations, 21 Jac. 16.

That it must be sued for within six Years after the Cause of Action: But Debt upon an Award under Hand and Seal, is as if it were a Specialty, and so out of the Statute. 2 *Keb p.* 462.

This is the same, if the Submission be without Deed.

And if the Parties do not perform *Party restored* the *Arbitrement*, the Party is restored to his first *Action.* to his first Action.

But yet it is at his Election to have a Writ of Debt upon the Award or the first Action.

But

Payment made.

But if the Payment be made, the first Wrong is altogether determined by the Award. 4 H 6. 1. a. 25. b. 21 H. 7. 28. b. 49 E. 3. 3.

Submission by Word, and collateral Act awarded.

If the Submission be by Word, and the Award is, that one of the Parties shall do a collateral Act, other than Payment of Money, it gives no Action; and if it be not indeed executed and satisfied, the *Arbitrement* hath no Effect; and such *Arbitrement* does not determine the first Wrong. 19 H. 6. 38. a. 20 H. 6. 19. a.

Submission by Bond, and Bond forfeited.

Yet if the Submission be by Bond, if a collateral Act be awarded to be done; if it be not performed, the Bond shall be forfeited. 9 E. 4. 44. a.

Usual Course of Practice.

And 'tis the usual Course to sue the Bond on Non-performance of the Award. See after.

As to the Performance.

As to the Performance of an Award, The Parties ought to do all that in them is to perform it. 21 E. 4. 39. b.

And if there be two Ways, he ought to perform it by such Means as himself can, rather than with the Aid of another. 21 E. 4. 40.

Arbitrement ought not to be performed in Part, and in Part not. 6 H. 7. 10. b.

Part one Time, Part another.

But though an *Arbitrement* cannot be made by the Arbitrators, Part at one Time and Part at another Time, yet it may be performed Part at one Time,

Time, and Part at another Time. But this must be before the Day limited.

The Parties shall have reasonable Time allowed them for the Performance of an Award if no Time be limited. 20 E. 4. 8. *b.*

If the Act which the Arbitrators award that one of the Parties shall perform, cannot be performed before another Act first done by the other Party, *First Act to be done.* if the Party does not do the first Act, the other is excused.

Arbitrement that one Party shall pay Money, and the other shall make a Release; it shall be done at one and the same Time, if there be no Bond to perform the Award.

But if there be an Obligation to perform the Award, then either ought to perform his Part, under the Peril of the Obligation 21 H. 7. 28. *b.*

An Award that the Party shall pay Money in the House of a Stranger, is not good; for this is to award him to do a Thing which will make him a Trespasser, and so liable to an Action, which is unreasonable. Mich. 22 Car. B. R.

But if the Award be to pay the Money in the House of one of the Parties that submitted to the Award, such an Award is good; for it implies a Licence from the Party for him to pay it there. Pract. R. 27.

Award

*In or at the
House if a
Stranger.*

Award to pay Money in or at the House of J. S. The Plaintiff saith, it was not paid at the House, which the Court held to be well enough; and if it were paid in the House, it may be given in Evidence on Issue, That it was paid at the House. 1 *Keb.* 753. 16 *Car.* 2.

B. R.

*At the House
of a Stranger.* An Award to pay Money at the House of a Stranger may be good enough; for he may come to the House in many Cases, and be no Trespasser; but if he cannot come to the Stranger's House without being a Trespasser to him, there such an Award is not thought good. *Pract. Reg.* 27. and by *Keb.* 1. 13 *Car.* 2. Where Payment is to be in the House of a Stranger, he shall not be presumed to be able to perform it; but otherwise, where the Payment is to be at the House of a Stranger.

If the Matter contained in the Award, and the Matter contained in the Submission, of which the Arbitrators ought to award, differ in Word or in Circumstance;

The Parties to the *Arbitrement* shall not in a Suit thereupon be allowed to aver, that it is all one. *Dyer* 242. 7. 8. *El.* 242. b. 52. See before.

*Averment not
allowed.*

Can.

Concerning an Umpire, with several Authorities from the late Reports relating to Award and Umpirage, &c.

If the Parties submit themselves to the Award of certain Persons; and if they cannot agree, then to the Ordinance of another as Umpire: If the Arbitrators make their Award of Parcel, the Umpire shall not make his ^{*Award of Part by Arbitrators.*} Award of the other remaining Part.

But if the Submission be such, that the Umpire shall make his Award of ^{*Award of Part by Umpire.*} the Whole or Part; then it is said, he may make Award of such Part with which the Arbitrators have not medled:

30 H. 6. 10. a. 11. b.

In Debt upon a Bond conditional to perform an Award, to be made by two by such a Day; and if they cannot agree, than to the Umpirage of *A. B.* so he award by the same Time; and 'tis there said, that where the Arbitrators and Umpire have the same Time, if either make an Award it is sufficient. But then all agreed, That an absolute Refusal of the Arbitrators should be alledged, as to say, That they altogether refused, and not to say, that they did not, nor could not make the Award. 2 Keb. 562. 619 Siderf. 428. 1 Mod. Rep. 15. See after.

Where the Arbitrators and Umpire have the same Time.

If

When the Arbitrators wholly refuse.

If the Arbitrators do wholly desert it, the Umpire may award; for if the Arbitrators desert only one while, they may take it up within the Time. *Siderf.*

455.

Arbitrators left to chuse the Umpire.

But where the Arbitrators are left to chuse the Umpire in the same Time, and do so, they thereby relinquish their Power, especially where the Submission to an Umpire is upon their Disagreement; otherwise an Award by the Umpire, within their Time, is void. 1 *Keb.* 6. 148. 2 *Keb.* 714. 1 *Mod. Rep.*

274.

Arbitrators chuse Umpire after their Time.

In Debt upon a Bond to perform an Award of Arbitrators, so as it be made by the second of *March*; and if not agreed then, to the Umpirage of whom *A.* and *B.* shall elect, so as he award by the fifth of *March*. It was objected, That the Umpire was elected but the third of *March*; but the Court said, If he were elected on the fourth it was sufficient. 1 *Keb.* 387. See after.

Usual Course of Practice.

Note, That the usual Time is now by Bond, with a Time over for the Umpire, in case the Arbitrators make no Award.

Necessary Matters.

What Things are necessary to make a good Submission, and a good Award. *Hard. Rep.* 43, 44, &c.

An Award that one of the Parties shall discharge the other from his Undertaking to pay a Debt to a third Person, a good Award. 1 *Mod. Rep.* 9. 2 *Keb.* 546. 1 *Cro* 541.

Judge *Twissden* said, (upon a Motion in Arrest of Judgment, because an Award was not good) That the Umpirage could not be made till the Arbitrators Time was out; and if any such Power be given to the Umpire, it's naught in its Constitution; for two Persons cannot have a several Jurisdiction at one and the same Time. 1 *Mod. R.* 15. 274. 2 *Keb.* 562. 1 *Saund.*

129. 1 *Sid.* 455. 1 *Rel.* 261.

1 *Cro.* 263. Arbitrators may nominate an Umpire within their Time for making their Award, so that the chusing the Umpire doth not extinguish their Authority, as on or before the 19th of February. It is true, the Arbitrators might chuse him upon that Day, or before; but yet still they might have made an Award, and therefore he could not. 1 *Mod.* 275. 2 *Saund.* 132.

See after.

Submission of an Award to four, so that they made it by the 16th of November, and signified it under their Hands and Seals of two of them, and then alleges the Award under two of their Seals; to which the Defendant demurred, conceiving the Award to be void, because the Submission was

1

to

Umpirage not to be made till Arbitrators Time out.

Arbitrators may nominate an Umpire within their Time, and yet make an Award.

Submission to 4. Award under the Hands and Seals of 2.

to four; but the Court gave Judgment for the Plaintiff according to the Cases in 2 Cro. 276. and 400. *Vid.* 1 *Ventr.* 40. 1 *Roll.* 223, 375. 3 *Bull.* 62. 2 *Keb.* 571, 580.

*Defendant
binds the A-
ward is For-
feiture of his
Bond.*

If the Defendant be the Cause that no Award is made, it is as much a Forfeiture of his Bond as not to perform it would be. 1 *Ventr.* 71.

In Debt upon Bond conditioned to perform an Award; Defendant pleaded *Nullum fecerunt Arbitrium*, Plaintiff replies, and sets forth the Award which did express the Bond of Submission to be dated the 17th of *February*, whereas it was dated the 10th of *February*, and for that Misrecital the Defendant demurred. But the Court held clearly, that it did not hurt the Award. And so if the Submission had been of divers particular Matters, yet if they had meddled with the Things only submitted, it had been well enough. 1 *Ventr.* 184.

*Bond of Sub-
mission misre-
cited in the
Plea.*

*Place to be
mentioned.*

If no Place is mentioned in pleading where the Award was made, it is naught. 2 *Ventr.* 72.

Q. Whether Arbitrators having Power to name an Umpire, may name a second if the first refuses?

*Arbitrators
having a Power
to name an
Umpire, may
name a second
if the first re-
fuses.*

R. Debt upon Bond to stand to the Award, of F. C. and R. S. on or before the 9th of *A.* and if the Arbitrators made no Award, than to stand to the Umpirage of such Umpire as F. B. and R. S.

R. S. should nominate, to be made on or before the 16th of A. The Defendant says F. B. and R. S. made no Award, but named one F. J. to be Umpire, who also made no Umpirage.

Plaintiff says, 'Tis true, but that F. J. refusing, the Arbitrators within the Time named C. C. Umpire, who accordingly made an Award before the Day, that the Defendant should pay the Plaintiff 70 l. and that the Parties should give mutual Releases, and that the Defendant did not pay the 70 l. The Defendant demurred, and Judgment was given for the Plaintiff by three Justices; Chief Justice Pollexfen dissenting because the Arbitrators had executed their Authority, and had no Power to name a second Umpire; and though F. J. did refuse, he might still have proceeded, and so C. C. had no Authority as Umpire, or else there would be a concurrent Authority in several Persons which the Law would not suffer; as in *Roll. Abridg.* 262, and *Style* 306. so 1 *Roll. Abridg.* 261. But the Reasons of the other three Justices were, That F. J. tho' nominated, yet was no Umpire, for his Refusal hinder'd that, and 'tis the Acceptance that makes him Umpire or Arbitrator. And that admitting it only an Authority to the Arbitrators to name an Umpire, yet there was no compleat Execution; for the Refusal of F. J. made it amount

D. d only

*Refusal of the
first, hindered
his being
Umpire.*

only to a bare Proposal to him, and did not conclude the Arbitrators to name another; and the Condition of the Bond was to be observed, to submit to such a one as should be Umpire, and Umpire by the Nomination of the Arbitrators. And the Case in *Palmer's Rep.* 289, was cited, of a Sheriff's delivering Execution a second Time upon an *Haber' fac. possessionem*, because after the first Delivery was over, it was discovered that a Person was hid in a Room of the House, whereupon he was turned out, and the Sheriff delivered Execution again. It was further said, That if *F. J.* after Refusal, might have taken upon him again in Case the Arbitrators had named no other; yet after another was named he could not, because their naming another upon his Refusal, had quite taken away their first Nomination; but if *F. J.* had accepted before they proceeded to name another, then they had been prevented naming of any other; so here could be no concurrent Power at all. *Vid.* 2. *Roll. Abridg.* 261. *Frall* and *Bierly*, and 2 *Vent* 113, &c. 2 *Saund.* 129. 1 *Mod. Rep.* 274. and these Points were settled, *viz.* That where an Authority is once fully executed, the Power is determined; but not so without a compleat Execution; and where a Man is vested with a bare Authority, his Denial or Refusal

to

*Acceptance
makes the
Umpire, &c.*

*Where an Authority is once
fully executed,
the Power is
determined.*

to execute it does not conclude him, but that he may execute it afterwards; but 'tis otherwise where he is vested with an Interest. 2 *Vent.* 115, 116, 117. 3 *Lev.* 263.

Submissions to Awards are to be favourably construed, because they tend to the End of Controversy. 2 *construed.* *Vent.* 115.

That an Award may be by Word ^{strictness of} Mouth, and he that sets forth ^{parcel Award} such Award, is not tied to Strictness of Words; but 'tis sufficient to shew ^{not so as the Condition of a Bond.} the Effect and Substance of what was awarded. *Id.* 242.

But *note*, The Condition of the Bond must be regarded.

An Award to pay the Charges of a Suit may be good, though the Sum is uncertain; for it may easily be reduced to Certainty. *Id.* 243. 3 *Lev.* 18. *Vid. postea.*

That where Money is awarded to be paid to a Man, and no Mention made of his Executors, yet in Case that he dies before, the Money shall be paid to his Executors; for an Award creates a Duty, and the Executor shall release where the Testator was awarded so to do. *Id.* 249.

If a Submission be conditional, with ^{Where Money shall be paid to the Executors.} So that, &c. So *that* the Arbitrator arbitrate all ^{in the Conditional.} Differences, the Arbitrator may not make his Award of Parcel of the Differences, if he had Notice of more. 1 *Saund.* 32. D d 2 Also

So that, &c.
and general
Releases a-
warded.

Also if the Submission be conditional, with a *so that*, &c. and the Arbitrator makes no Mention in his Award of Part of the Differences of which he had Notice, yet the Award is good, if he award general Releases on both Sides. *Id.* 33. (1 *Lev.* 58.)

*All on one
Part.*

An Award where all is to be performed on one Part, and nothing on the other, is void. *Id.* S. 326. 2 *Saund.* 190.

*Arbitrement
not limited by
Statute.*

An *Arbitrement* under the Hand and Seal of the Arbitrator is a Specialty not limited by the Statute of 21 *Jac.* 1. c. 16. *Vid.* 2 *Saund.* 65, 66, 67.

Loy Gager.

A Man may wage Law against an Award under Hand and Seal, if the Submission was not by Specialty under the Hand and Seal of the Party that submitted to such Award. *Idem.* 65, 74.

*Arbitrators
and Umpire
have the same
Time.*

If a Submission be to Arbitrators, and that if they disagree, then to an Umpire, and the Award and Umpirage are limited to the same Day, there the Power of the Umpire is void, unless that the Arbitrators disagree, and declare, That they will not intermeddle afterwards. *Idem.* 130, 132. See after.

*So that the
Arbitrators or
Umpire make
their Award
to Morrow.*

If a Submission be to Arbitrators, so that they make their Award to Morrow, and if they cannot agree then to an Umpire, so that he make his Umpirage to Morrow or next Day; in

in such Case the Umpire cannot make his Umpirage on the Morrow. *Idem*, 130, 131.

The exprefs Agreement of the Parties by Submission may make an Umpirage good, although the same Time is limited for the Arbitrator and for the Umpire, to make their Award or Umpirage. *Idem*. 132.

Made good by Agreement of the Parties.

It was agreed by the Court, That the Arbitrators within the Time limited to make their Award, may chuse an Umpire to make an Umpirage, after the Time for their Award determined, according to the Case of *Jennings* and *Vandeput* in *Cro. Car.* 273. and in *Roll.* 262. *Idem*, *Saund.* 133. See before.

Arbitrators may chuse an Umpire after their Time determined.

If all Debts, Sums of Money, and Demands are submitted to *Arbitrement*, the Arbitrators have Power to award a Release of all Bonds, Specialties, Judgments, Executions and Extents by which the said Debts, Sums of Money, and Demands are due. *Id.* 190.

Release of all Debts by which the Money is due.

Also in Debt upon *Arbitrement*, the Defendant shall not avoid the Award, because a Release is awarded of all Bonds and Judgments, tho' Bonds and Judgments were not within the Submission, unless he shews specially that there were some Bonds or Judgments between the Parties. *Ibid.*

Release of Bonds and Judgments, tho' not submitted.

D d ; An

*Good in Part,
and void in
Part.*

An Award between *A.* and *B.* that *A.* should pay 10 *l.* to *B.* and 5 *l.* to a Stranger, and that *B.* shall give *A.* a general Release, the Award as to the 5 *l.* is void, but good for the Residue, because *B.* had no Prejudice, altho' the 5 *l.* were not paid to the Stranger, for nothing more than 10 *l.* was intended him, and for his Benefit. *Idem,* 293.

*To be bound
in a Bond.*

An Award that one of the Parties shall be bound in a Bond to the other is good enough, but not that he shall find Sureties to enter into an Obligation. *Id.* 337.

*Upon a Promise
to perform, &c.
an Action lies
for each Sum.*

Upon a Promise to perform an Award, which was, that the Defendant should pay several Sums of Money at several Times, an Action lies for the first Sum, and new Actions for the other Sums as often as they shall become due. *Id. ibid.*

*Award plead-
ed on one Part,
Plaintiff shews
the Release.*

Defendant pleads an Award which is on one Part only; the Plaintiff replies and shews the Residue by which 'tis made sufficient, the Defendant cannot traverse it. 3 *Lev.* 164.

*Of all De-
mands to the
Time of the A-
ward is void.*

An Award to release all Demands generally, is intended Demands to the Time of the Submission, and good; but of all Demands, to the Time of the Award is void. 3 *Lev.* 188, 344.

Debt upon Bond to perform an Award, the Defendant pleads no Award; the Plaintiff sets forth the Award, citing

citing Differences concerning a House, *Upon citing*
 divers Elms and Arrears of Rent; *the Award, &*
 and the Arbitrators to make a final *other Dis-*
 End awarded the Defendant should *rences appear.*
 pay the Plaintiff 4*l.* for all the Ar-
 rears of Rent; and adjudged good
 upon Demurrer, that the 4*l.* should
 be intended in Satisfaction of all, the
 others not appearing, but only by
 the Recital of the Award. 1 *Lev.* 132,
 133.

Submission by *A.* and *B.* of one Part, On one Part
 and *C.* of the other Part, and the *A.* only.

ward made only between *A.* and *C.* was
 adjudged void, upon the Defendant's
 Demurrer. 1 *Lev.* 139. Also there held
 that the Words *so that* the Arbitrators,
&c. does refer as well to the Umpire.
 2 *Cro.* 278. 3 *Cro.* 838. The Plaintiff
 perceiving the Opinion of the Court
 to be against him, prays Leave to dis-
 continue, which was denied him; for
 the Court permits Discontinuances in
 Case of a Bond for Payment of Money;
 yet never in Case of a Bond to perform
 an Award unless upon extraordinary
 Occasions. *Ibid.* and 140.

So that, &c.
refers also to
the Umpire.

Seldom a Dis-
continuance
upon Arbitra-
tors Bonds.

Where the Arbitrators and Umpire
 both named by the Parties, have the
 same Day, the Umpire cannot make
 any Award, as upon a Bond to per-
 form an Award, *so that, &c.* at or be-
 fore the Feast of St. Michael, and if
 they made none, then to perform the
 Umpirage of J. S. *so that, &c.* at or
 before

Arbitrators
and Umpire
have both one
Time.

D d 4

before the said Feast of St. Michael: The Defendant pleads, That the Arbitrators made no Award, neither did the Umpire make any Umpirage. The Plaintiff replies no Award, but sets forth an Umpirage, and assigns a Breach upon it. The Defendant demurs, and the Submission was adjudged to be void. 1 *Lev.* 285.

Note, It was said, If it had been that if the Arbitrators made none, then to such Umpire as they should name, might have been good, because by their Nomination of an Umpire they had waved the Submission to themselves; but then 'it seems it ought to be pleaded that the Arbitrators had refused to make any Award, and so here: Whereupon Judgment was given for the Defendant. *Vid. ante,* and *Dyer* 347. 1 *Roll. Abridg.* 261.

Aliter if the Arbitrators had refused.

One Day to both.

Arbitrators choose an Umpire, yet make the Award.

Submission to A. and B. and if they could not agree, to such Umpire as they should elect, so as before the first of May, &c. The Arbitrators before their Time expired chose an Umpire, and afterwards themselves made an Award; it was objected, That by choosing an Umpire, they had determined their Power, and put all into the Power of the Umpire. Justice *Twissden* inclined that the Award was good, and cited the Case of *Bernard and King.* *Style* 306. said to be so adjudged.

judged. It was answered in that Case, the Arbitrators and Umpire were both elected by the Parties; but here the Umpire is elected by the Arbitrators, whereby they had discharged themselves of all their Authority; and only two Justices being in the Court, it was adjourned. 1 Lev. 174.

The like Submission, so that the Arbitrators, *ad vel ante* 19 Feb. the Umpire, *ad vel ante* 20 Feb. The Defendant pleads no Award made; the Plaintiff agrees; but that 19 Feb. the Arbitrators elected an Umpire, who made an Umpirage, and thereupon assigns a Breach. The Defendant de-

Difference where the Arbitrators elect an Umpire, and where he is appointed by the Parties.

murred, and argued, that the Umpirage was void, being made before the Power of the Arbitrators was determined: But it was said on the other Side, that their Power was determined by their electing the Umpire; otherwise where the Umpire is appointed by the Party submitting, and he makes his Umpirage before the Time limited for for the Arbitrators do expire. But yet *Twissden* and *Moreton* strongly inclined, that the Umpirage was void, and the Power of the Arbitrators not absolutely determined by the Election of an Umpire, they having not absolutely refused to make any Award. *Rainsford* seemed to be of a contrary Opinion, and it was adjourned. 1 Lev. 302.

Arbitrators not absolutely refusing.

That

To pay an Attorney's Bill, &c.

That one should pay, on Condition Releases be given to each other; and that the Defendant should pay an Attorney's Bill, and assigns a Breach, that he had delivered him the Bill amounting to 40 s. and he had not paid it, good. 3 *Lev.* 18. for the Money upon the Bill was certain by the Delivery of the Bill.

Releases on what is good.

If the Release be to be made upon Performance of that which is well awarded, 'tis good. 3 *Lev.* 413.

Stranger's House.

Award to pay in or at the House of a Stranger, good. *Idem*, 153.

Note, By a Stat. of 9 & 10 *W.* 3. c. 15. After the 11th of *May*, 1698. it was enacted, That all Merchants and Traders, and others, desiring to end any Controversy, Suit or Quarrel (for which there is no other Remedy but by personal Action or Suit in Equity) by Arbitration, may agree, that their Submission of the Suit to the Award or Umpirage of any Person or Persons, should be made a Rule of any of his Majesty's Courts of Record which the Parties shall chuse; and may insert such their Agreement in their Submission, or the Condition of the Bond or Promise: And upon producing an Affidavit of such inserting, and upon Reading and Filing such Affidavit in the Court so chose, the same may be entred of Record in such Court, and a Rule of Court shall thereupon

upon be made, that the Parties shall submit to, and finally be concluded by, such Arbitration or Umpirage; and in case of Disobedience thereto, the Party neglecting or refusing shall be subject to all the Penalties of contemning a Rule of Court, and Process shall issue accordingly, which shall not be stop'd or delayed; unless it appear on Oath, that the Arbitrators or Umpire misbehaved themselves, or that such Award was corruptly or unduely procured. In which Case such Arbitration or Umpirage shall be void and set aside by any Court of Law or Equity; so as such Corruption or undue Practice be complained of in the Court where the Rule is made for such Arbitration, before the last Day of the next Term after such Arbitration made and published to the Parties.

Which Clause I presume, may be to the Effect following, *viz*;

And the above bound *A. B.* doth agree and desire, that this his Submission to the Award above-mentioned, be made a Rule of her Majesty's Court of Queen's Bench, pursuant to the late Act of Parliament for this purpose provided.

The like for the other Party in the Condition of his Bond of Submission.

'Tis

'Tis said (and so it appears) that this *Stat.* 9 & 10 *W.* 3. extends only to Submissions of such Matters, for which there is no other Remedy, but by Personal Action or Suit in Equity.

For Arbitrators cannot make an Award of Freehold; as to adjudge the Land of one to another. 14 *H.* 4. 19. 23 *H.* 8. *Keil.* 99. But if Submission lie by Bond, & if the Bond will not be forfeited. As before observed.

Of Awards made upon Submission, by Rule of Court. See *Raym.* 35.

1 *Sid.* 54, 452, 453.

See more of this Head of *Arbitrement*, in a Treatise called, *The Law of Arbitrements*. And especially in the late *General Abridgment*. Tit. *Arbitrement*.

Next we will look into some other Matters more nearly relating to Traders, Artificers, Farmers, &c. as enacted by several Statutes of this Realm; and as an Introduction thereto, will first take a Prospect of the Inland and Foreign Trade belonging to England.

C H A P. XXI.

*Statute - Law concerning Tradesmen, &c.**Of the Inland Trade of England,*

ENGLAND may justly be accounted the principal Nation for Commerce in the whole World, and indeed it is the most proper for Trade; as being an Island, having innumerable large, safe, and commodious Ports, excellent natural Products, and considerable Staple-Manufactures. By our Inland Trade, we appear to have great Stocks of Money, well divided into many Purses; The *Royal Exchequer*, as in other Countries, does not hoard the greatest Part; nor is it in the Hands only of Noblemen, nor of Merchants and Bankers, much less of Monopolizers and Usurers; but the generality of Traders find sufficient for their Use; buying and selling, not as formerly upon Payment at 3, 6, or 9 Months End, but with ready Money, which has here a swift and constant Circulation; so as to make all Sorts of Commodities cheap among us, and at the same Time Money plentiful: For Men, with God's Blessing, and their own Industry, can

can raise for themselves good Estates from the modest Gains of 3 or 4 *per Cent.* sooner than they could in former Times at 10 or 12; because selling for ready Money, there are great Number of Traders, who can make 3 or 4, nay, some 5 or 6 Returns of their Money in a Year. For Example, a Wool-Stapler, or a Corn-Merchant, can buy 100 Pounds-worth of Ware, and sell it again in two Months Time at 3 or 4 *per Cent.* Gain, and can go to Market both with the Principal Money, and the Improvement; which, if he be fortunate enough to return six Times a Year, and continues Trading from 20 Years of Age to 60, his 100 *l.* will have gained him 6 or 7000 *l.* the Improvement of another 100 *l.* being sufficient to maintain him all that Time: And when he has traded for himself 7 or 8 Years, if he marries a Wife with 2 or 300 *l.* he may by just Dealings, maintain his Family handsomely, and leave an Estate to his Heirs of 10000 *l.* whereas a Student, who has spent 500 *l.* in an University, is seldom known, besides his Patrimony and Wife's Portion, to leave 1000 *l.* behind him. The same matter of Fact might be exemplified by Clothiers, Dyers, Tanners, Bakers, Woodmongers, Cordwainers, Vintners, Wine-Coopers, &c.

of

Of the Foreign Trade of England.

THE *English* apparently drive the greatest Trade of any Nation in the Universe, except the *Hollanders*, in Point of Transportation; and 'tis that which makes our Kingdom so rich and flourishing: Thus we traffick with our Commodities in all Parts of the trading World; more especially *Spain* and *Portugal*, *Italy*, the *Baltick*, *Turky*, the Western Coast of *Africa*, and the *East* and *West-Indies*. The principal Commodities we export of our own Growth, are, Wool manufactured into Cloath, broad and narrow; also Stuffs, Serges, Bays, Kerzies, Frieze, Flannel, &c. to the Value of 2 Millions a Year; Tin, Lead, and Coals, as much as amounts to above half a Million. The very Cloathing, Household-stuff, &c. convey'd from hence yearly to the *West-Indies*, is computed at 200,000 *l.* Our Iron we export manufactured into great Guns; Bombs, Carcasses, &c. Great quantities of Corn, with abundance of Red Herrings, Pilchards, and Salmon taken upon our Coast, are also exported from *England*. Of Leather, Hops, Beer, and Ale, Copper, Allum, Saffron and Liquorice, all of our own Product; of Satins, Damasks, Velvets, Plushes, and

and many other Manufactures, likewise export vast Quantities, and to a very great Value.

And further, we do not fall short of other Trading Nations, but even surpass most of them in useful Inventions and Improvements of Art; so from thence we reap the Advantage of a considerable Gain: Here are made the best Clocks and Watches, with Cases and Boxes for them; also the best Locks, Barometers, Thermometers, Telescopes, Microscopes, Prospective Glasses, and all Sorts of Mathematical Instruments. The Art of making and polishing Glass, we have improv'd to that Perfection, that *Venice* it self is to seek how to equal us; and for fine Earthen Ware, we do not fall much short of *Holland*. We have likewise found Means for the weighing up Ships sunk to the Bottom of the Sea; the new Lacker for Iron, which makes it so serviceable; and the Manner of polishing the Insides of Pieces of Ordnance; besides many other useful Inventions, to long to enumerate.

Our Trade with *Ireland*, by transporting its Wool, Beef, Hides, Tallow, Butter and Fish, is of great Advantage to both Kingdoms, and has been reckon'd at half a Million a Year. Our Cod-fish Trade from *Newfoundland*, is also very beneficial to us; and

and so is like to be our Trade from *Hudson's-Bay* and *Greenland*; our East-Land Trade begins to revive, but our *Muscovy*-Trade has been in a Manner engross'd by the *Hollanders* since the Troubles in the Reign of King *Charles I.*

See the Stat. 5 *Geo. c. 21.* For better Securing the lawful Trade to and from the *East-Indies*, &c.

BY the Statute of 1 R. 3. 9: An Alien Artificer (not made Denizen) shall not remain nor exercise any Handicraft in *England*, unless as Servant to a Subject skilful in the same Art, on Pain to forfeit all his Goods.

Alien.

No such Alien shall, here in *England*, make any Cloth, or put any Wooll to work, on Pain to forfeit the Cloth so made.

Cloth, Wooll.

Such an Alien shall here in *England*, sell his Wares in Gross, and not by Retail, on Pain to forfeit the Value of the Wares otherwise sold. And being an handicraft Man, and inhabiting a great House or Chamber, shall not take any Apprentice or Servant to work with him, unless it be his Son or Daughter, or else a Subject born, on Pain to forfeit for every Apprentice or Servant otherwise taken, 20 *l.*

*Apprentice.
Servant.*

*Vid. Appendix,
p. 34.*

The Forfeitures of this Act are to be divided between the King and the Prosecutor.

E e By

Apprentice.

By the Statute of 14 H. 8. 2. No Stranger Artificer, (Denizen, or not Denizen) shall take any Apprentice but such as is born under the King's Obedience, on Pain to forfeit 10*l.* for every Apprentice otherwise taken, to be divided between the King and the Prosecutor.

*Appendix, 34.**Journey-men.*

No Alien shall keep above two Journey-men, except they be born under the King's Obedience, upon the like Pain, to be divided as aforesaid.

Restoration.

All Strangers (Denizens or not Denizens) dwelling within two Miles of *London*, shall be under the Reformation of the Wardens of Handicraft within that City, and of one substantial Stranger, being an Householder of the same Craft, to be chosen by the same Wardens.

The said Wardens, and that one Stranger, shall assign a proper Mark for Strangers Wares, without taking any Thing for the same.

Mark for Wares.

The said Wardens and Strangers shall have Power to search, view, and reform the Wares of Aliens made within the said Precinct.

*Smiths,
Joiners,
Coopers.*

Smiths, Joiners, and Coopers, (being Aliens) shall put such Marks to their Wares before they sell or use them, as the said Wardens shall appoint, without taking any Thing therefore, on Pain to forfeit the double Value thereof.

thereof, to be divided between the King and the Prosecutor.

If upon Search, the Wardens and Strangers shall find any Wares to be deceitfully made, they shall be forfeited, *Forfeiture.* viz the one Half to the King, and the other Half to the Finder, and shall be recovered by Action of Detinue.

Wardens and Masters of Fellow-ships of Handicrafts in other Corporations, and Bailiffs, and other head Officers in Towns, lacking Wardens, have like Power to reform Strangers; and Strangers are bound to yield Obedience unto them, upon the like Pains as aforesaid. *Obedience.*

Here if a Stranger be wronged, upon Complaint to the Chancellor and Treasurer of England, or to the Justice of Assize, he shall have Redress. *Redress.*

This Act shall not extend to Strangers dwelling in Oxford, Cambridge, and St. Martin le Grand, London. *Places excepted.*

If the Wardens with a Stranger, or the Officers of Corporations, or other Towns, refuse to mark a Stranger's Wares, being required so to do, in such Case it shall be lawful for such a Stranger to sell his Wares, this Act notwithstanding. *Refusal to mark.*

This Act shall only extend to Joyners, Pouchmakers, Coopers, and Blacksmiths, and to no other Craft. *Pouchmakers.*

E c 2

Any

Any of the King's Subjects having Land worth 100 *l. per Annum*, may retain any Stranger that is a Joyner or Glasier to work for him; this Act notwithstanding.

Joyner, Glasier.

Stat. 21 *H. 8.* 16. A Decree made in the Star-Chamber the 20th of *February*, 20 *H. 8.* concerning Artificers Strangers, was confirmed, the Substance of which Decree hereafter followeth, *viz.*

A Stranger Artificer shall not keep in his House at one Time, above two Strangers Servants; howbeit, a Subject Artificer may retain as many Strangers as he pleaseth, to be his Servants or Apprentices.

Servants.

Strangers Artificers may take as many *Englishmen* to be their Servants or Apprentices as they can get.

Apprentices.

Strangers Artificers shall be contributory with *English* Artificers, and in Case they refuse, they shall not only lose the Benefit of this Decree, but likewise be prohibited to exercise their Craft, on Pain of incurring the Forfeitures of the abovesaid Statute.

Contributions.

Strangers Artificers shall (upon law-ful Warning) go with the Wardens and other Governors of the same Company to make Search, which if they refuse, and that be proved before the Chancellor of *England*, Mayor of *London*, or (in other Places) before the chief

Refusal to make Search.

chief Officers, they shall no longer exercise their Profession in *England*, on Pain of the Forfeitures aforesaid.

Strangers Artificers shall (upon Oath. lawful Notice,) make Oath to be true to the King, and obedient to his Laws, and to make due Search with others, and not to discover to any beforehand, the Intention of Search; and being sworn shall pay for their Commission, as the Subjects of *England* do.

No Strangers but Denizens shall *House or Shop*. keep House or Shop, on Pain of incurring the Penalties of the aforesaid Statutes.

Strangers shall not assemble but in *Assembly*. the Common Halls of their Mysteries, upon the Penalties aforesaid.

This Decree and Act (for so much *Cordwainers*. as concerns Cordwainers) shall extend as well 'to such as work old Stuff, as those that work new.

This Decree and Act shall not extend to Strangers (Denizens or not *ed*. Denizens) dwelling in *Oxford, Cambridge, or St. Martin le Grand, London*.

By the Statute of 22 H 8. 13. No *Baker, Brewer, Stranger, being a common Baker, Brewer, Surgeon, Scrivener, Surgeon or Scrivener, shall be accounted an Handicraft Man, within the Penal Statutes made against Strangers Artificers.*

E e 3

By

By the Statute of 32 H. 8. 16. No Alien Artificer (Denizen or not Denizen) in Oxford, Cambridge, or St. Martin le Grand, London, shall keep above two Strangers Servants at one Time, on Pain to incur the Penalties of 14 H. 8. 2. Every Alien (not Denizen) within the King's Dominions, shall be bound to observe the Laws of this Kingdom.

Servants.

No Subject or Stranger (using no Handicraft) shall retain above four Servants Strangers, on Pain to forfeit for every Servant above that Number 10*l*.

The abovesaid Forfeitures shall be divided betwixt the King and the Prosecutor; this Act shall not be prejudicial to a Proclamation published by the King, concerning the Payment of Customs for Strangers, to endure for certain Years. Lords of the Parliament may keep six Strangers born at one Time.

Lease.

No Stranger (except Denizens) shall take a Lease of any House or Shop, on Pain to forfeit 5*l*. and none shall let them such Leases upon the like Pain: Each of them to be divided betwixt the King and the Prosecutor, and such Lease to be void. *Note*, A Denizen is an Alien enfranchised by the King's Charter.

*Conservation
by Artificers,
&c.*

Stat. 2 & 3 E. 6. 15. Artificers, Workmen and Labourers that con-

spire together concerning their Work or Wages, every of them so conspiring shall forfeit for the first Offence 10 *l.* to the King, and if he pay not within the six Days after Conviction by Witness, Confession, or otherwise, he shall suffer twenty Days Imprisonment, and during that Time shall have no Sustenance but Bread and Water: For the second Offence, he shall forfeit 20 *l.* and that not paid within six Days, as aforesaid, shall suffer the Pillory; and for the third Offence shall forfeit 40 *l.* and that not paid within the said Time, shall again suffer the Pillory, lose one of his Ears, and ever after be taken as a Man infamous, and not to be credited.

Q. Justices of Assize, Justices of Peace, Mayors, Bailiffs and Stewards in Sessions, Leets and Courts have Power to hear and determine these Offences: But *Quære*, Whether this Branch of this Statute be not repealed by the general Words of 5 *Eliz.* 4. following. *Revised and continued* 22 & 23 *Car.* 2. *cap.* 19. & 1 *Jac.* 2. *cap.* 17.

By the said Statute of 5 *Eliz.* 4. so *General Statute* much of all Statutes made, and every

Branch thereof, as touch or concern the Hiring, Keeping, Departing, Working, Wages, or Order of Servants, Workmen, Artificers, Apprentices and Labourers, or any of them, and Penalties and Forfeitures concerning the same,

same, are repealed; howbeit the said Statutes, and every Branch and Matter contained therein, not repealed by this Act, shall remain in Force.

That none shall hire or be hired for less than one whole Year in the Arts of *Clotbier, Woollen-Weaver, Tucker, Fuller, Clotbworker, Shearman, Dyer, Ho- sier, Taylor, Shoemaker, Tanner, Pewterer, Baker, Glover, Cutler, Smith, Farrier, Currier, Sadler, Spurrier, Tawner, Car- penter, Hat or Felt-maker, Fletcher, Ar- row-head-maker, Butcher, Cook, Miller.*

Clothiers, Wea- vers, Tucker, Fuller, Cloth- worker, &c.

Also *Mercbants, Mercers, Drapers,*

Goldsmiths, Ironmongers, Embroiderers, and Clothiers dwelling in corporate Towns, shall take no Apprentices

Mercbants, Mercers, Dra- pers, Gold- smiths, &c.

but their own Children, or such whose Parents have Inheritance or Freehold of 40 s. *per Annum*, to be certified under the Hands and Seals of three Ju- stices of Peace, of the County where such Lands lie, to the Head Officer of the said Corporation, who shall cause the same to be recorded. Arti- ficers in the Market-Towns not cor- porate, being Housholders, and of the Age of 24 Years, may take other Ar- tificers Children to serve as Appren- tices.

Apprentices, vid. Appendix, pa. 35, 36.

Mercbants, Mercers, Drapers, Gold- smiths, Ironmongers, Embroiderers, and Clothiers, dwelling in Market-Towns not corporate, shall take no Appren- tices but their own Children, or such whose

whose Parents have Inheritance of Freehold worth 3 *l. per Annum*, to be certified under the Hands and Seals of three Justices of Peace, as aforesaid.

But Smiths, Wheelwrights, Plough-Smiths, Wheelwrights, Millwrights, Carpenters, Rough-wrights, Car-masons, Plasterers, Sawyers, Lime-burners, Brick-makers, Bricklayers, Tilers, Salters, Helyers, Tile-makers, Linen weavers, Turners, Coopers, Millers, Earthen-potters, Wollen-weavers (of Housewives Cloth only) Fullers, Wood-burners, Thatchers and Singlers, may take Apprentices though their Parents have no Land.

None which hath not served an *Apprentice* seven Years, in any Art or Mystery now used, shall use the same, or set any to Work therein which hath not served out that Time, on Pain to forfeit 40 *s.* for every Month.

Wollen-Cloth Weavers (other than such as inhabit *Cumberland Westmorland, Lancaſter or Wales*, or in Cities, Corporations or Market-Towns) shall take no Apprentices, nor teach any their Art, save their own Children, or such whose Parents have Inheritance of Freehold worth 3 *l. per Annum*, to be certified under the Hands and Seals of three Justices of Peace of the County where the Lands be, on Pain to forfeit 40 *s.* for every Month; and the Indenture shall within three Months be registred in the Parish where the Master

Master dwells; the Fee of which Registering is 4 *d.* Every Cloth-worker, Fuller, Sbeerman, Weaver, Taylor and Shoemaker, shall for every three Apprentices keep one Journeyman, and for every Apprentice above three another Journeyman, on Pain of 10 *l.*

This Act shall not prejudice *Worsted-makers* nor *Worsted-weavers*, in *Norwich* and *Norfolk*.

But note, That by the Statute made in the 5th and 6th of *W. & M. Sess. 2. c. 3.* Reciting the Clause of the Act of 5 *Eliz.* 4. as to the *Woolen-Cloth-weaver* taking Apprentices, unless, &c. Forasmuch as such Part of the said Act hath been found prejudicial to the Clothing Trade, It is thereby Enacted, That so much of the said Act is thereby declared to be repealed and made void, as if the same had never been made.

Persons compellable to serve in the said Act.

By the said Act of 5 *Eliz.* 4. Every Person unmarried, or under the Age of 30 Years, though married, having been brought up in any of the Arts aforesaid, by the Space of three Years, and not worth in Lands 40 *s. per Annum*, or in Goods 10 *l.* and so allowed under the Hands and Seals of two Justices of Peace, the Head Officer, or two discreet Burgessees of the Place where the Party, so brought up, hath lived by the Space of one whole Year not already retained in Husbandry, the

the Arts aforesaid, or any other Art or Mystery; or in any Service upon Request of any Person using the same Art, shall not refuse to serve for the Wages limited by the Statute; and being so retained, shall not depart from his or their Service, without one Quarter's Warning, before two lawful Witnesses, or some lawful Cause to be proved before one Justice of Peace, or Head Officer, on Pain of Imprisonment without Bail; but upon Submission to perform the Service, they shall be enlarged without Fees; which Commitment and Inlargement, two Justices of Peace, the Head Officer, or two Burgeses, as aforesaid, unto whom Complaint shall be made, have Power to command as in their Discretion, upon due Proof, shall be thought fit: Every Person between the Age of 12 and 60, not already retained in any Service, nor employed about Husbandry, Mines, Glass, Coal, Fishing, Sailing, Provision of Grain or Meal, for *London*; nor Gentlemen born; nor Scholars in any University or School; nor worth 40 *s. per Annum* in Lands, or 10 *l.* in Goods; nor having a Father, Mother, or other Ancestor (whose Heir he is) worth 10 *l. per Annum* in Lands, or 40 *l.* in Goods, shall be compelled to serve in Husbandry; and shall not depart that *Husbandry* Service otherwise than afore limited, upon Pain above expressed.

Also

Warning.

Also none shall put away his Servant before the End of his Term, without a Quarter's Warning, or some lawful Cause, to be proved by two sufficient Witnesses, before the Justice of Oyer and Terminer, Justices of Assize, Justices of Peace in Sessions, a Head Officer, or two discreet Aldermen or Burgesses, on Pain of 40*s*. No Servant having served in one City or Town shall get to serve in another without a Testimonial, *viz.* in a Town Corporate, under the Seals of the Town, and two Householdiers there; and in the Country, under the Seals of the Constable or Constables, and two Householdiers there. Which Testimonial shall be made and delivered to the Party, and also registred by the Minister of the Place where the Servant dwelt; for which the Minister is to have two Pence.

*Testimonial.**The Form.*

The Form of the Testimonial is this; *Memorandum*, That *A. B.* Servant to *C. D.* of *I.* in the County of *E.* Husbandman (or Taylor, &c.) in the said County, is licensed to depart from his said Master, and is at his Liberty to serve elsewhere, according to the Statutes in that Case, made and provided; In witness, &c.

The Servant which sheweth not such Testimonial to the Chief Officer in a Corporation, or to the Minister, or some Officer in any other Place, where

where he is to dwell, shall suffer Imprisonment till he procure one; and if he procure not one within twenty one Days after his Imprisonment, or shew a false one, he shall be punish'd by Whipping as a Vagabond; and the Master forfeits such a Testimonial, shall forfeit 5*l*.

Those that work by the Day, or Time of Work, shall continue at Work betwixt the middle of *March* and the middle of *September*, from five in the Morning till betwixt seven or eight at Night, except two Hours allowed for Breakfast, Dinner and Drinking; and half an Hour for Sleeping, from the midst of *May* to the middle of *August*; and all the rest of the Year from Twilight to Twilight, except an Hour and an half allowed for Breakfast and Dinner, on Pain to have one Penny defalk'd out of their Wages for every Hour's Absence. None that takes Work by the Great, shall leave the same before it be quite finished, except for not Payment of his Wages, the Queen's Service, Licence of the Work-master, or other lawful Cause, on Pain to suffer one Month's Imprisonment, without Bail, and to forfeit 5*l* to the Party griev'd; besides his Cost and Damages, to be recovered at the Common Law, for the Loss sustained.

Licence to depart.

Also none retained in Service to work, shall depart without Licence, on Pain of one Month's Imprisonment.

Wages.

Such Wages of Labourers, Artificers, and others, as have been formerly rated, or concern Husbandry, shall be yearly assessed for the County by the Sheriff and Justices of Peace in Sessions, and in Corporations by the Head Officer, at their *Easter* Sessions, or within six Weeks after; and before the 12th of *July*-following, shall be certified under their Hands and Seals in *Chancery*; whereupon the Lord Chancellor or Keeper, shall send down printed Proclamations thereof into the County and Corporation, before the first of *September* then next following, which the said Sheriff, Justices, and Head Officer, shall before *Michaelmas* after, cause to be inrolled and proclaimed; but here, where the old Rates shall be certified to stand, no Proclamation is needful. See after.

Certificate.

A Justice of Peace, or Chief Officer, which shall be absent at taxing of Wages, (being not letted by Sickness, or some other reasonable Cause, to be allowed by the Justices upon Affidavit) shall forfeit 10 *l*.

Taking more Wages.

None shall give greater Wages than those so rated as aforesaid, on Pain of 5 *l*. and ten Days Imprisonment without Bail; and if any Person shall be

be convicted before two Justices of Peace, or a Head Officer, of taking more Wages, he shall suffer twenty-one Days Imprisonment without Bail.

Every Retainer, Promise, Gift, or *Promise void.* Payment of Wages, or other Things, contrary to the true Meaning of this Act; and every Writing and Bond to be made for that Purpose, shall be void.

Also, if any Servant or other shall be convicted before two Justices of Peace, or a Chief Officer, as aforesaid, by his own Confession, or the Testimony of two honest Men, to have assaulted his Master, Mistress, Dame, or Overseer, he shall suffer one Year's Imprisonment, or less, if the Justices, or Chief Officer, shall think fit; and if the Party shall be thought to deserve a *Punishment.* more severe Punishment, then to receive such open Punishment (Life and Member excepted) as the Justices in Sessions, or the Chief Officer, and four of the discreetest Men in the Corporation shall think convenient.

Artificers shall work in Hay-time and Harvest, on Pain of Imprisonment in the Stocks two Days and one Night; which the Constable shall inflict upon them, on Pain of 40*s.* *Harvest time.*

It shall be lawful for Labourers (other than such as are retained in Service according to this Statute) to go to other Shires to work in Hay-time and Harvest, so that they bring with

Labourers Testimonial.

with them a Testimonial, under the Hand of one Justice of Peace, or a Chief Officer, testifying, that they have not sufficient Work in the Place where they lived the Winter before; for which Testimonial they shall only pay a Penny.

Women unmarried.

Every unmarried Woman fit to serve, being 12 Years old, and under 40, shall, by two Justices of Peace, a Chief Officer, or two Burgeesses be compelled to serve for convenient Time and Wages, on Pain of Imprisonment.

Apprentices to be taken in Husbandry.

Husbandmen, being Housholders, and using half a Plough-land at least in Tillage, may take by Indenture Apprentices above the Age of 21 Years at least, or 24 Years, as the Parties can agree.

Housholders.

Every Housholder, at the Age of 27 Years, dwelling in a Town Corporate, and using there any Art or Mystery, shall and may take an Apprentice for 7 Years at least; howbeit, the Term ought not to expire before the Apprentice accomplish the Age of 24 Years.

Refusal to serve.

Also, if any Person, fit to make an Apprentice, refuse to serve upon Demand, one Justice of Peace, Mayor, or Head Officer, unto whom Complaint thereof shall be made, have Power to commit him to Ward, until he shall be willing to serve accordingly.

And

Difference reconciled.

And if there shall arise any Difference betwixt the Master and the Apprentice, one Justice of Peace in the County, or Mayor, or head Officer in a Corporation or Market-Town, shall have Power to reconcile it if he can; if not, then to bind over the Master to the next Quarter-Sessions; where the Justices of Peace, or any four of them, (one of the *Quorum*) or the head Officer, with the Consent of three of the Brethren, shall upon Default found in the Master, by Writing under their Hands and Seals, have Power to discharge the Apprentice of his Service; and if Default be found in the Apprentice, then to inflict such Punishment upon him as in their Discretion shall be thought fit.

None shall be bound to enter into Apprenticeship other than such as be under the Age of twenty one Years.

Justices of Peace in their several Divisions, and Head Officers in Towns Corporate, shall meet twice every Year, *viz.* once betwixt *Michaelmas* and *Christmas*, and another Time betwixt *Lady-day* and *Midsummer*, to give Order for the due Execution of this Statute.

The Forfeitures aforesaid (except those otherwise limited) shall be divided betwixt the Queen and the Prosecutor; and all Justices of Peace, or any two of them, (1 *Qu.*) and every

Ff Head

Head Officer shall have Power to hear and determine the Breach of this Statute upon Indictment or otherwise, and to award Procefs and Execution accordingly; and shall yearly in *Michaelmas* Term by Eftreat certifie into the *Exchequer*, the Fines which accrue upon this Statute, in Manner as they ought to do in other Cafes.

This Act shall not restrain the Cities of *London* and *Norwich* from taking of Apprentices as in Time past.

Indenture void.

None shall take Apprentices otherwise than is limited by this Act, on Pain of 10 *l.* and all Indentures otherwise made, shall be void.

Note, An Apprentice shall be bound by his Indentures, notwithstanding his Nonage of 21 Years.

The Inhabitants of *Godalming* in *Surrey* may take and use fuch Arts and Apprentices as Market-Towns may do by Vertue of this Act.

The Fines accruing by this Act in Towns Corporate shall be appointed by the Head Officer, to be collected as other Fines and Amerciaments for the Use of the same Towns.

Apprentice apprehended.

When an Apprentice departs from his Master's Service into another County or Corporation, it shall be lawful for the Justice of Peace, or Head Officer, there being no Justice of Peace, to direct a *Capias* to the Sheriff, or other chief Officer for his Apprehension,

Apprehension, and being taken, the said Justice of Peace or Head Officer shall commit him to Ward until he give good Security that he will honestly serve out his Time.

Notwithstanding this Act, High Constables have Power to keep their Statute-Sessions, so that they there do nothing repugnant thereunto.

Note, That upon a Motion to quash an Order made by the Justices of Peace to compel a Man to take an Apprentice upon the Statute of 43 Eliz. 2. It was objected that the Justices had not Power to compel a Man to take whom they would appoint, because they might impose upon a Man his mortal Enemy; but the Court said, No Injustice is to be supposed in the Justices, and as the Statute obliges Justices to put Children Apprentices, so it obliges the Masters to receive them; and they confirmed the Order. 1 Lev. 84.

That the using of a Trade within a Country-Village is not within the Statute of 5 Eliz. for exercising a Trade, not having been an Apprentice to it for seven Years. 1 Mod. Rep. 26. and the Judges said, They would never extend that Statute further than they needs must.

Upon an Action by Apprentice against a Master for not maintaining and teaching him his Trade. The

Ff 2

Defen-

Statute-Ses.
sent.

43 Eliz. 2.

Defendaant pleads, That at the General Sessions of Peace, it was ordered, he should be discharged of the Plaintiff for his disorderly Living, and beating his Master and Mistress; and the Court here said, that the Justices of Peace have the same Power of discharging upon Complaint of the Master, as upon Complaint of the Apprentice, else that Master would be in an ill Case that were troubled with a bad Apprentice. *1 Mod. Rep. 287. 2 Keb. 696, 745, &c. and 1 Saund. 314.*

The Court were of Opinion, That it was the Intention of the Act, *5 Eliz. c. 4.* That an Apprentice should be discharged of a bad Master, as well as a Master might be discharged of a bad Apprentice. The Court doubted whether the Defendant (the Master) ought not to have gone to one Justice first to complain, as the Statute directs, before he applied to the General Sessions of Peace; and then if he could not compound and agree it, he might have applied himself to the Sessions; for the Statute intended there should be, if possible, a Compromise in private, and the Power of the Sessions is conditional, *viz.* if one Justice cannot end it, *&c.* and it was adjourned. *Vid. 1 Vent. 175.*

If an Apprentice marry within the Time of his Apprenticeship, he shall not for that be deprived of his Freedom, but

but shall have 2 *Mandamus* to be admitted, though an Action of Covenant may lie against him for it. 1 *Lev.* 91.

By the Statute of 1 *Jac.* 1. 6. the *Wages rated.* Statute of 5 *Eliz.* 4. shall give Power to the Justices of Peace to rate the Wages of any Labourers, Weavers, Spinsters, and Work-Men and Work-Women whatsoever.

Also the rating of such Wages in Sessions by more Part of the Justices within any particular Riding or Division, (where General Sessions have been used severally to be kept) shall be as effectual as those rated at the General Sessions of the whole County.

The Sheriffs and Head Officers within their several Precincts, shall cause the said Rates to be proclaimed in such sort as if they had been sent down printed from the Lord-Keeper; which all Persons shall be bound to observe, upon the Pains and Penalties mentioned in the said Statute of 5 *Eliz.* 2. 4.

A *Clothier* or other convicted before the Justices of Assize or Peace in Sessions, or before two Justices of Peace (1 *Qu.*) by his own Confession, or Evidence of two Witnesses, not to have observed the said Rates so appointed, shall forfeit 10 s. to the Party grieved, to be levied upon Warrant from the same Justices by Distress and Sale of his Goods.

F f 3

None

None shall incur any Danger for not making Certificate of the Rates into the *Chancery* according to 5 *Eliz.* 4.

*Clothier
Justice.*

A *Clothier* being also a Justice of Peace, shall not be a Rater of Wages of any Artificer that depends upon making of Cloth.

*Vid. Appen-
dix, p. 38.*

Brasiers, Copper-Smiths, Pewterers, &c.

*Selling Brass
out of Markets,
&c.*

BY Statute 19 *H. 7.* 6. none shall sell or change Bras, save only in open Fairs and Markets, or in their own Houses (except they be desir'd by the Buyers of such Wares) in Pain of 10*l.*

*Goodness of the
Metal.*

None shall cast or work Bras or Pewter, but according to the Goodness of Metal wrought in *London*, in Pain to forfeit the one Moiety thereof to the King, and the other to the Finder.

Laymetal.

Hollow Ware of Pewter, call'd Laymetal, shall be wrought after the Assize of Laymetal in *London*, and shall be marked, in Pain to forfeit the said Wares, or being sold, the Price thereof, which shall be divided as afore said.

*Using false
Weights.*

None shall use (in the selling Bras or Pewter) any false Beams or Weights, in Pain to forfeit 20*s.* to be divided as above, and in Case he be not able to pay it, he shall be (by the Head

Head Officer committed to the Stocks till the next Market-day, and then stand upon the Pillory.

Stat. 4 H. 8. 7 appoints Searchers of such Brass and Pewter, &c.

The Stat. of 25 H. 8. 9. also is made for searching and seizing imported Wares, also against exporting such Wares. So is the Stat. of 23 H. 8. 4. and Stat. 2 & 3 Ed. 6. 37.

But by 5 & 6 W. & M. cap. 17. Metal made of *English* Ore may be exported by Stat. 33 H. 8.

Bakers, Brewers, Butchers, Coopers, &c.

Vide Appendix
pa. 36.

IF any common Baker, Brewer, or Tipler, have broken the Assize of Bread, Beer or Ale, he may be fined by the Discretion of the Justices, &c.

If any Steward in Leet or Officer in a Market-Town shall take a Fine for such Breach of Assize, where temporal Punishment is appointed, he shall be grievously fined. *Per Stat. 51 H. 3. 13 R. 2. c. 8.*

Officers Duty
theretupon.

If a Baker or Brewer shall break

Penalties.

the Assize the first, second or third time; he may be amerced according to his Offence, except it be great, 51 H. 3. But if it be great, and he doth offend a fourth time, or oftener, then the Baker offending ought to be set on the Pillory, and the Brewer punished by the Tumbrel. Again, by Stat.

E f 4

2 &

Conspiracy among Bakers, Brewers, &c.

2 & 3 *Ed. 6. cap. 15.* If any Butchers, Brewers, Bakers, Poulterers, Cooks, Costermongers, or Fruiterers, shall conspire, covenant or take any Oath that they shall not nor will not sell their Victuals, but at certain Prices, every one of them so offending being lawfully convicted thereof, shall forfeit for the first Offence 10*l.* to the King; and if he does not pay the same within six Days after Conviction, he may be imprisoned twenty Days, and have only Bread and Water for his Sustainance; and for the second Offence 20*l.* and that not paid within six Days, he may be punish'd by the Pillory; and for the third Offence 40*l.* and if not paid within six Days, he ought to be punish'd by the Pillory, and to lose one of his Ears, and never be credited in matter of Judgment: And if such Conspiracy be acted by the major Part of the Company of such Victualers, their Corporation may be thereupon dissolved. 2; *H. 8. 4.* relates to the making Brewers Vessels, and marking them, &c. Also Soap-Vessels and their Contents and Marks.

Penalties for Conspiracy.

Butchers.

No Butcher may buy any Cattle, and sell the same again alive in Pain to forfeit them, one Moiety to the King, the other to the Informer. 3 & 4 *Ed. 6. cap. 15.* And by a Statute

*Butchers sel-
ling live Cat-
tle.*

*Vide Appendix
pa. 38.*

tute 15 Car. 2. cap. 8. and 22 & 23 Car. 2. cap. 19. It is provided that such Butcher as shall sell or expose to Sale by himself or his Servant any fat Oxen, Sheep, Runts, Kine, Heifers, Calves, Sheep or Lambs alive, forfeits the double Value between the King and the Prosecutor; also no Drover shall be licensed by the Justices of Peace within *London* and *Westminster*, or 80 Miles of the same.

Drovers.

Justices of Peace shall not licence any to be Drovers, who exercise the Trade of Graiser or Butchers; nor any other but such as shall become bound to the Queen with two Sureties of the same County, by Recognizance, in such Sum as the Justices shall think fit, not to sell any Cattle within 60 Miles of the Place where they bought them. But it seems not to extend to Salesmen and Factors employed by Farmers or Feeders.

Where upon any Prosecution on this or any other Settlement, Question shall arise concerning Distance of Time or Place between the buying and selling the Cattle, the Proof shall be incumbent on the Party accus'd: And if the Party accus'd plead that the Cattle were his own, it shall be incumbent on him to prove his Property. But if it appear to the Justices, that such Prosecution was only for Vexation, they may award the Party prosecuted treble Costs.

*Property
pleaded.*

Justices

Justices of Peace at their Quarter-Sessions, shall hear and determine all Offences in buying or selling Cattle contrary to this Settlement or any other in Force, by Inquisition, Presentment, Bill or Information, and make Extracts of one Moiety of the Forfeitures to be levied to the Queen's Use, and award Execution of the other Moiety to the Prosecutor, by *Fieri fac. or Cap.*

The Justices shall proceed, any Writ or Writs of *Certiorari* notwithstanding.

If any fat Cattle bought in *Smitbfield* Market, shall be brought again into the same Market, to be sold alive; they shall be seized by the Bailiff, Toll-keeper, or other Officer having Oversight of the Market, to the Use of the Mayor, Aldermen, &c.

For Discovery thereof, all Cattle sold, shall be marked by cutting off two Inches of the further Horn.

Foreigners as well as Free-men may buy or sell any Cattle in the Market of *Smitbfield*, the Custom of Foreign bought, and Foreign sold or other Usage notwithstanding.

Provided that this Constitution shall not extend to Salemen or Factors employ'd by Farmers or Feeders. *Vide* 22 & 23 Car. 2. 19. 4 & 5 W. & M. cap. 24. and 11 & 12 W. & M. cap 13.

By

*Cattle sold to
be mark'd.*

By 31 Ed. 3. 7. A Butcher that sells Swines-flesh mezzled, or dead of the Murrain; for the first Offence, he may be amerced, for the second, have the Pillory, for the third, be imprisoned, and for the fourth, abjure the Town.

1 Jac. 1. 22. He may not gash or Gashing or hurt any Hide of Ox, Bull, Steer or watering of Cow, in Forfeiture of 1 s. 8 d. per Hide. Mezzled.

Or if he shall water any Hide, except in June, July, or August, or shall put to Sale any that is putrified, he shall forfeit 3 s. 4 d. to be divided between the King and the Prosecutor.

He shall not be both Tanner and Butcher, under Forfeiture of 6 s. 8 d. per Day, for every Day he continues both Professions. *Ibid.*

Butcher not to
be a Tanner.

Neither may he kill any Flesh in his Scalding-house, or within the Walls of London, under Forfeiture of 12 d. for an Ox, and 8 d. for every other Beast; to be divided betwixt the King and the Prosecutor: And this Law also extends to all wall'd Towns (*Carlisle and Berwick only excepted*) 4 H. 7. 3.

And by the same Statute, none shall kill any Calves under five Weeks old, in Pain to forfeit for every Calf so kill'd, 6 s. 8 d.

No

Horners.

No Stranger shall buy any *English* Horns unwrought, gathered or growing in *London*, or within 20 Miles thereof: The Wardens of the Horners in *London*, may search all Ware belonging to their Mystery in this City, and within 24 Miles thereof.

None shall sell *English* Horns unwrought to any Stranger; nor send any such Horns beyond Sea, on Pain to forfeit the double Value thereof, to be divided betwixt the Queen and the Profecutor.

Butter-Sellers, Cheesemongers, &c. Concerning them.

Butters.

By 4 & 5 *W. & M. c. 7.* For the due Weighing, Packing, and Shipping of Butter. After any Factor or Buyer has bought Butter or Cheese, and approved the same, the Seller shall not afterwards be chargeable with any of the Penalties in 14 *Car. 2.*

Such Factor or Buyer shall set his Seal or Mark, or Name at Length, on the Cask in which such Butter is; and in case the same be afterwards exchanged or opened, and the Cask changed; or bad Butter pack'd up and mix'd with good; or any Fraud be committed by the Seller, the Offender being convicted upon Oath, before one or more Justices of Peace, or upon his own Confession, shall forfeit 20 *s.* for

Casks marked.

for every such Firkin and Offence, to be levied by Distress and Sale of the Offender's Goods, restoring the Overplus, after Charges defrayed. Constables of Parishes, and Chief Constables of Hundreds, are hereby authorized to levy the same by Warrant, under Hand and Seal of such Justice or Justices. *Ibid.*

Warehouse-keepers, Weighers, Searchers, or Shippers of Butter and Cheese, ^{Butter, &c. to be shipped for} in any Port within this Kingdom, shall London.

receive all Butter and Cheese, that shall be brought to them, for any Cheesemonger free of the City of London, or any other making the said Commodities, and take Care thereof, till the same can be shipped; and shall ship it successively, at it comes to their Hands, on the next Vessel that shall come to lade Butter and Cheese for London (except the Owner order the contrary) and shall receive of the Owners 2 s. 6 d. for every Load, and no more, and so proportionably: And if any such Persons, or their Servants, shall refuse to receive such Goods, or to take due Care thereof, or to ship them successively, as aforesaid, they shall forfeit for every Firkin of Butter 10 s. and for every Weigh of Cheese, 5 s. to be levied as aforesaid. *Ibid.*

Ware-

Warehouse-keepers, &c.
to keep Books.

Warehouse-keepers, Weighers, &c. shall keep Books, and enter therein all Butter and Cheese that shall be brought to them, as it comes; with the Time when receiv'd, the Quantity, and the Owner's Name; and when the Goods are shipped off, shall make Entries of the Time when shipped, the Master's Name, the Vessel's Name, and to whom consign'd: Which Books shall be open, for all Persons to see and search *gratis*. And if any Warehouse-keeper, &c. shall not keep such Book, or not make Entries as aforesaid, or undue Entries, or refuse in the Day-time, to produce the Book to be searched; such Offenders, being convict in manner aforesaid, shall forfeit for every Firkin of Butter, 2 *s*. 6 *d*. for every Weigh of Cheese, 2 *s*. 6 *d*. and for every other the aforesaid Offences, 2 *s*. 6 *d*. to be levied as aforesaid; and for want of Goods for levying the Penalty, the Justices, before whom such Conviction shall be made, may commit the Offender to Gaol, till the Penalties be satisfied. *Ibid*.

Refusal to take
on Shipboard.

If Masters of Vessels, coming to lade Butter and Cheese, or their Servants, refuse to take on Board any such Butter and Cheese, as shall be tender'd to be shipped by any such Warehouse-keeper, &c. before their Vessels be laden, they shall forfeit, being convict as aforesaid, for every Firkin of Butter

ter so refused, 5 s. and for every Weight of Cheese, 2 s. 6 d. to be levied as aforesaid. *Ibid.*

One Half of the Forfeitures within this Act, to go to the Poor of the Parish, and the other Half to the Informer. *Ibid.*

This Act shall not exclude Cheesemongers; free of the City of *London*, from sending their own Vessels, or such as they shall hire, for their own Goods.

Nothing herein shall extend to the *Counties* of *Chester* and *Lancaster*, nor to *cepted*. the County of the City of *Chester*.

Persons aggrieved by the Determination of any Justice of Peace, may appeal to the next General Quarter-Sessions, whose Determination shall be final: The Person appealing, first giving to the Party accused, a Bond of 20 l. Penalty, with one or more Sureties, to the liking of the Justice of Peace, to pay such Costs as shall be allowed, in Case the Appellant be not relieved; the said Costs to be paid within a Month after the determining the Appeal. *Stat. cod.*

Of

*Of Badgers of Butter, Cheese, Corn, &c.
Also concerning Forefallers and Regra-
tors, &c.*

*By Stat. 5.
Eliz. 12.*

NONE but a married Man and Householder, of the Age of thirty Years, at least, shall take upon him to be a Badger, Lader, Kidder, Carrier, Buyer, or Transporter of Corn or Grain, Butter and Cheese; neither he without Licence in open Sessions of the County, where he has dwelt for the Space of three Years before, under the Hands and Seals of at least three Justices (1. *Quor.*) on Pain of 5 *l.* which Licence shall remain in Force for one Year only, from the Date of it; and all Licences otherwise granted, shall be void.

The Justices of Peace in Sessions are to take Recognizances of Badgers, &c. at their Discretion, that they shall not forestal or engross, or put in Practice any Act contrary to 5 & 6 E. 6. 41.

The Clerk of the Peace shall write and enter the Licence and Recognizance; and his Fees shall be as follows, *viz.* for writing the Licence 12 *d.* for writing the Recognizance 8 *d.* and for entering them both in a Register-Book 4 *d.* which Book he shall bring to every Sessions.

This

This shall not give Liberty to any Badger, &c. to buy Grain out of an open Fair or Market, to sell again, unless there be special Words in his License to warrant the same, on Pain to forfeit for every Time so offending. *5 l.*

These Forfeitures are to be divided betwixt the Queen and the Prosecutor.

The King's Moiety shall be increased according to the usual Manner, and the Prosecutor's levied by *Fieri facias* or *Capias*; but when the Suit is wholly the Queen's, the whole shall be estreated to her Use.

Justices of Peace have Power to hear and determine these Offences in Sessions by Inquisition or Verdict, or otherwise upon the Oath of two Witnesses at their Discretions, and to make Process thereunto.

This Act shall not restrain Purveyors of Cities and Towns Corporate, neither yet the Inhabitants of the Counties of *Westmorland, Cumberland, Chester* and *York*.

Therefore from what is aforesaid, such Badgers and Buyers of Corn, also Market-men, and Chapmen ought to take Care lest they incur the Penalties provided against *Forefallers, Regrators* and *Ingrossers*; for by the Stat. of 5 & 6 *Reynolds*, E. 6. 14. he or she that shall buy or contract for any Merchandize, Victual, or other

G g

other Thing whatsoever (in the Way) before it shall be brought (by Land or by Water) unto any City, Port, Road, Fair, or Market where it should be sold, or shall cause the same to be so bought, or shall dissuade People from bringing any such Commodity to any such Place, (or being bought) shall perfwade them to inhance the Price thereof, shall be adjudged a *Fore-staler*. *Ibid.*

Regrator,
what.

A *Regrator* is he that buys any Grain, Wine, Fish, Butter, Cheese, Candles, Tallow, Sheep, Lambs, Calves, Swine, Pigs, Geese, Capons, Hens, Chickens, Pidgeons, Conies, or other dead Victual whatsoever, brought to a Fair or Market to be sold there, and doth sell the same again in the same Fair or Market, or in some other Fair or Market within four Miles. *Ibid.*

Ingrosser.

An *Ingrosser* is he that gets into his Hands by Buying, Contract, or Promise, (other than by Demise, Grant, or Lease of Land or Tithe) any Corn growing in the Fields, or other Grain, Butter, Cheese, Fish, or other dead Victual whatsoever, with the Intent to sell it again. *Ibid.*

Penalties.

The Party guilty of any of the Offences aforesaid, shall forfeit for the first Offence the Value of the Goods so bought or had, and two Months Imprisonment without Bail.

For

For the second Offence he forfeits the double Value, and six Months Imprisonment without Bail.

For the third he shall forfeit all his Goods, be set upon the Pillory, and Imprisonment at the King's Pleasure.

But this Act shall not restrain the buying of Barley or Oats, to be converted into Malt or Oatmeal, nor the Provision of any Town Corporate, Ship, Castle, Fort, *Berwick, Holy Island, &c.* or any Fishmonger, Innholder, Victualler, Butcher, Poulterer, or People dwelling within one Mile of the main Sea, which use to buy and sell Fish for any Thing concerning their several Mysteries or Trades, they retailing the same at reasonable Prices: Nor any Badger, Lander, Kidder or Carrier, assigned to that Office by three Justices of the Peace, and delivering the Commodity out of his Hand within one Month after he buys it, nor the taking of any Thing reserved upon a Lease; so that all these Things are done without Fraud and Forestalling.

He that buyeth Grain in any Market for Change of Seed, shall bring as much the same Day, and sell it if he can, according to the present Price of Grain there, on Pain to forfeit double the Value of the Grain so bought.

He that buys any Cattle, and sells the same again alive within five Weeks, shall forfeit the double Value thereof; during which Time he ought to keep them upon Pasture, which he had either by Grant or Prescription.

Justices of Peace in Sessions have Power to hear and determine the aforesaid Offences by Inquisition, Bill, or Information, or by the Testimony of two Witnesses, and to exact the one Half of the Forfeitures to the Use of the King, and cause the other Half to be levied to the Use of the Prosecutor by *Fieri facias* or *Capias*, and when the Prosecution shall be at the King's Suit only, to exact the whole to the King's Use; but none shall be punished twice for the same Offence.

Also this Act shall not restrain the Transporter of Grain or Cattle from Port to Port (allowed by three Justices of the Peace, and not Forestalling) so that he embark the same within Forty Days after he buys them, and bring back from some Justice of Peace or Head Officer, a Certificate of his Unlading, agreeable to his Cocquet.

Neither shall this Act restrain a Drover, allowed by three Justices of the Peace, (one of the *Quorum*) and selling his Cattle at forty Miles Distance from the Place where he bought them. Howbeit, such Allowance ought not to continue above one Year.

And

And the Offences against this Statute shall be prosecuted within two Years.

Note, That by the Act 3 & 4 W. & M. cap. 8. it shall be lawful for any Persons, Native or Foreign, at any Time to ship and transport into any Part of the World, in Amity with his Majesty, Beef, Pork, or Hogsflesh, Butter, Cheese, or Candles, free from Custom or Imposition whatsoever. And this Act was made for the Encouragement of the breeding and feeding of Cattle.

Concerning Petty Chapmen, Pedlars and Vid. Appendix, p. 42.
Hawkers.

By Stat 9 & 10 W. 3. c. 27. As to *Petty Chapmen*, &c. it is enacted, That every *Hawker, Pedlar, Petty Chapman*, or any other trading Person or Persons going from Town to Town, or other Mens Houses, and travelling either on Foot or with Horse, Horses, or otherwise, within this Kingdom (except as therein excepted) carrying to sell, or exposing to Sale any Goods, Wares or Merchandizes, shall pay unto his Majesty four Pounds: And that every Person so travelling with a Horse, &c. or other Beast bearing or drawing Burden, shall pay four Pounds for each Horse, &c. over and above the first four Pounds.

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That

The Trades-Man's Lawyer, and

That every Pedlar, Hawker, Petty Chapman, and any other Person or Persons so travelling as aforesaid, upon receiving Licence, shall pay to the Commissioners one Moiety of the Duty, and give Bond for the other, to be paid at the End of six Months, with an Allowance of 2*s.* in the Pound, for prompt Payment of the last Moiety:

That if any such Hawker, &c. be found so trading without, or contrary to such Licence, such Person shall for each and every such Offence forfeit twelve Pounds; one Moiety to the Informer, the other to the Poor of the Parish wherein such Offender shall be discovered.

That every Person so trading, who upon Demand made by any Justice of the Peace, Mayor, Constable, or other Officer of the Peace of any Town Corporate or Borough, where he or she shall so trade, shall refuse to shew unto such Justice, &c. his or her Licence, shall forfeit five Pounds, to be paid to the Churchwardens of the Parish, for the Use of the Poor of the Parish, where such Demand shall be made; and for Non-payment shall suffer as a common Vagrant, and be committed to the House of Correction.

A Forfeiture of 5*s.* between the King and Prosecutor, upon Proof of a forged Licence, and also the Party

Party to be subject to the Laws for Forgery.

Such as are sued for putting this Act in Execution may plead the General Issue, *Not guilty*, and give the Special Matter in Evidence; and if it go against the Plaintiff, the Defendant shall have treble Costs.

The Constable, Headborough, &c. that being required, refuses to be aiding in the Execution of this Act, being convicted by the Oath of one or more credible Witnesses before any Justice of Peace for the County or Place where such Offence shall be committed, shall forfeit for each Offence forty Shillings, to be levied by Warrant, by Distress and Sale, one Moiety to the Poor, the other to the Prosecutor, rendering the Overplus to the Owner.

Any Person may seize and detain any such *Hawker*, &c. till a Licence be produced; and if none, then till Notice may be given to the Constable, &c. to carry the Person to some Justice of the Peace, who upon Proof by Oath or Confession, may cause the said twelve Pounds, with Charges to be forthwith levied by Distress and Sale of the Offender's Goods.

This Act not to prohibit any Person from Selling any Acts of Parliament, Proclamations, Gazettes, licensed Almanacks, or other printed Papers li-

licenc'd by Authority, or any Fish, Fruits or Victuals; nor to hinder any Person or Persons, who are the real Workers or Makers of any Goods or Wares within this Kingdom, or his or their Children, Apprentices, Servants or Agents, from carrying Abroad, exposing to Sale and Selling any of the said Goods or Wares of his or their own making, in any publick Mart, Fairs, Markets or elsewhere; nor any Tinker, Cooper, Glasier, Plumber, Harness-menders, or other Persons usually trading in mending Kettles, Tubs, Household-goods or Harness whatsoever, from going about and carrying with him or them proper Materials for mending the same. Nor to hinder any Person from Selling any Sorts of Goods or Merchandize in any publick Mart, Market or Fair within this Kingdom.

Vid. Appendix, p. 38.

Receiving Goods wrongfully gotten.

Of Brokers, Stock-Jobbers, &c.

By Stat. 1 Jac. I. 21. The Sale of Goods wrongfully gotten to any Broker in London, Westminster, Southwark, or within two Miles of London, shall not alter the Property thereof.

And if a Broker having receiv'd such Goods shall not upon the Request of the true Owner, truly discover them, how and when he came by them, and

and to whom they are convey'd, he shall forfeit the double Value thereof to the said Owner.

This Act shall not prejudice the Ancient Trade of Brokers in *London*, being selected and sworn for that Purpose; it being only intended against Frippers and Pawn-takers, who for the most Part keep open Shop.

By 3 & 4 *W. & M. cap. 9.* Persons buying or receiving stol'n Goods, knowing them to be stol'n, shall be deemed Accessaries to the Felony after the Fact; yet by *Stat. 1 Anne, cap. 9.*

Buyers and Receivers of stolen Goods knowingly, may be prosecuted for a Misdemeanor before the Principal be convicted. Which shall exempt them from being punished as Accessary when convicted.

There was an Act made 8 & 9 *W. Brokers and ill Practise of Stock-jobbers, and pre- tended Brokers, within the Cities of London, Westminster, Borough of South- wark, or Weekly Bills of Mortality, in making Bargains between Merchant and Merchant, or Merchants and Tradesmen, &c.*

Also by another Act in the same Year, Formaking good the Deficiencies of several Funds, and enlarging the Capital Stock of *England*; It is enacted

Perfurers.

*Ancient Bro-
kers of Lon-
don.*

*Persons
Receivers of
Stolen Goods.*

Prosecution.

*Brokers and
stock-jobbers
in London,
&c.*

*Extortioners,
and Usurers.*

enacted, That every Broker, &c. who shall take above 2*s*. 6*d*. for the Brokeridge of 100*l*. shall forfeit 20*l*. Any contracting for any *Premium*, contrary to the said Act, to forfeit 500*l*. and suffer as an Extortioner. The Stat. 1 Jac. 1 21. also relates to Brokers, &c. taking above 6 per Cent. per Ann. And so does 12 Car. 2. 13. &c.

A Regulation concerning Button-Makers.

Vide Appendix. By Stat. 4 & 5 W. & M. cap. 10. No Foreign Buttons, made of Hair, or other Foreign Buttons whatsoever, shall be imported or barter'd, sold or exchanged, on Pain to forfeit the Buttons so imported, barter'd, sold, or exchanged; and under such further Penalties as are express'd in Stat. 14 Car.

p. 38.

2. Intituled, *An Act, prohibiting the Importation of Foreign Bone-Lace, Cat-Works, Embroidery, &c.* One Moiety to the King, and the other to the Informer.

The Justices of Peace, within their respective Divisions, shall have the same Authority and Power to issue their Warrants, to seize all Foreign Buttons whatsoever, that by the Acts is given them to seize Foreign Buttons made of Thread and Silk.

By Stat. 10 W. 3. c. 2. No Persons whatsoever, in England, Wales, or Berwick, shall make, sell, or set on any Cloaths, or wearing Garment, any Buttons made of

of Cloath, Serge, Drugget, Fricze, Camlet, or any other Stuffs of which Cloaths, and wearing Garments, are usually made; or any Buttons made of Wood only, and turned in Imitation of other Buttons, on the Forfeiture of 40*s.* for every Dozen of such Buttons so made, sold, or set on; and in like Proportion for a lesser Quantity; one Moiety to the Queen, the other to the Prosecutor.

The Rates of Carr-Men, as settled at a Vide Appendix.
General Quarter-Sessions. P. 39.

From the Wharf between the Tower Carrmen and London Bridge, to Tower-street, Rates.
Grace-Church-street, Fen-Church-street, Bishopsgate-street, within Cornhill, and Places of like Distance up the Hill, with 18 Hundred Weight, not exceeding 20 Hundred Weight, 2*s.* and for every Hundred Weight above 20 Hundred, 2*d.* Sea-Coals a Load, i. e. Half a Chaldron, or an hundred of Faggots, 1*s.* 2*d.* From any of the aforesaid Wharfs to Broad-street, Lombury, Old Jewry, Bessishaw, Coleman-street, Ironmonger lane, Aldermanbury, and Places the like Distance, the aforesaid Weight, 2*s.* 6*d.* Coals or Faggots, 1*s.* 4*d.* From any of the said Wharfs, to Smithfield-bar, Holbourn-bar, Temple-bar, or like Distance, like Weight, 3*s.* 4*d.* Where the Weight from 18 to 20 Hundred pays

pays 2 s. 2 d. from 14 to 18 Hundred pays but 1 s. 10 d. and where from 18 to 20 Hundred pays 2 s. 6 d. from 14 to 18 Hundred pays but 2 s. Where from 18 to 20 pays 2 s. 2 d. from 8 to 14 Hundred pays but 1 s. 6 d. and where from 18 to 20 pays 2 s. 6 d. from 8 to 14 Hundred pays but 1 s. 8 d. There are other Particulars stated, but according to these Propositions.

Note, That for the foregoing Rates, the Carr-men are to help as much as as they can to load and unload their Carts; and every Licenced Carr-Man is to have a piece of Brags fixed on his Cart, with a certain Number, which is register'd in *Christ's Hospital*: So that if any Carr-Man offend, the Person griev'd may repair every Tuesday at two a-clock in the afternoon to *Christ's Hospital*, the Court then sitting; and giving the Number, the Carr-Man's Name will be found out, and he punished.

Boatmen, Watermens Rates.

Rates, said to be signed and agreed upon by the Privy Council, and the Lord Mayor and Court of Aldermen, to be taken by Watermen.

From London to	Limehouse	} Oars. Scull
	New-Crane	
	Shadwell Dock	
	Bell-Wharf	
	Ratcliff-Cross	6 d. 3 d.
		2
		From

Country-Man's Friend.

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From London to	Wapping-Dock	} Oars. Scull.
	Wapping New-Stairs	
	Wapping Old-Stairs	
	The Hermitage	
	Rotherhitb Church-Stairs	
	Rotherhitb-Stairs	6 d. 3 d.

From St. } Rotherhitb Church-Stairs } Oars. Scull.
Olave's to } And Rotherhitb-Stairs. } 6 d. 3 d.

From Billingsgate to St. Saviour's-Mill. 6 d. 3 d.

From St. Olave's to St. Saviour's Mill. 6 d. 3 d.

All the Stairs between London-Bridge and West-minster, Oars 6 d. Sculler 3 d.

From either. Side above London-Bridge to Lambeth and Foxball, Oars 1 s. Sculler 6 d.

From Whitehall to Lambeth and Foxball, Oars 6 d. Sculler 3 d.

From	Temple	} Oars. Scull.
	Dorset Stairs	
	Black-Fryar-Stairs	
	Paul's Wharf	
		to Lambeth 8 d. 4 d.

Over the Water directly in the next Sculler, between London-Bridge and Limehouse, or London and Foxball, 2 d.

From London to Gravesend; whole Fare 4 s. 6 d. with Company 9 d.

From London to Grays or Greenbire; whole Fare, 4 s. with Company 8 d.

From London to Purfleet or Eriff; whole Fare 3 s. with Company 6 d.

From London to Woolwich; whole Fare 2 s. 6 d. with Company 4 d.

From

The Trades-Men's Lawyer, and

From London to Blackwall; whole Fare 2 s. with Company 4 d.

From London to Greenwich; whole Fare 1 s. 6 d. with Company 3 d.

From London to Deptford; whole Fare 1 s. 6 d. with Company 3 d.

From London to { Cbelfey
Battersey
Wassworth } Whole Fare 1 s. 6 d.
With Company 4 d.

From London to { Putney
Fulbam
Barn-Ebna } Whole Fare 2 s.
With Company 4 d.

From London to { Hammerfmitb
Chiswick
Mortlack } Whole Fare 3 s. 6 d.
With Company 6 d.

From London to { Brentford
Isleworb
Richmond } Whole Fare 3 s. 6 d.
With Company 6 d.

From London to Twickenbam; whole Fare 4 s. with Company 6 d.

From London to Kingston; whole Fare 5 s. with Company 9 d.

From London to Hampton-Court; whole Fare 6 s. with Company 1 s.

From London to { Hampton-Town
Sunbury } Whole Fare 7 s.
With Company 1 s.

From London to { Walton
Weybridge
Cbertysey } Whole Fare 10 s.
With Company 1 s.

From

From London to Stains; whole Fare 12 *s.* with Company 1 *s.*

From London to Windsor; whole Fare 14 *s.* with Company 2 *s.*

Rates for carrying Goods in the Tilt-boat between London and Gravesend.

For a half Firkin 1 *d.*

For a whole Firkin 2 *d.*

For a Hoghead 2 *s.*

For a Hundred weight of Cheese, Iron, or any heavy Goods 4 *d.*

For a Sack of Salt or Corn 6 *d.*

For an ordinary Chest or Trunk 6 *d.*

For an ordinary Hamper 6 *d.*

For every single Person in the ordinary Passage, 6 *d.*

For the Hire of the whole Tilt-boat 1 *l.* 2 *s.* 6 *d.*

Carriers and Waggons.

Vide Appendix.
p. 39.

By the Statute 6 *Annæ* cap. 29. Which repeals so much of the Act 7 & 8 *W.* 3. as enjoins Waggons, and others, to draw with a Pole or with double Shafts, &c. It is enacted,

— That no Carriage, with any Burden, &c. (other than such as are employed about Husbandry, and in carrying Hay, Straw, Corn unthrashed, Coal, Chalk, Timber for Shipping, Materials for Building, Stones or Ammunition, or Artillery for the Queen's Service) shall go in any Highway with above

above six Horses, Oxen or Beasts, under Penalty of 5*l.* one Part for the Highways, and the other for the Discoverer, and Prosecutor. A Provision is thereby made for drawing up hill with as many Horses, or Beasts, as the Justices of Peace at their Quarter-Sessions shall direct.

By the Statute of 3 & 4 *W. & M.* c. 12. it is enacted, That the Justices of Peace of every County, at their Quarter-Sessions, after *Easter*, yearly, shall assess the Prices of all Land-Carriage of Goods to be brought into any Place within their Jurisdictions, by any Common *Waggoner* or *Carrier*; and shall certify such Rates to the Mayors, or other Chief Officers of every Market-Town; and *Waggoners* or *Carriers* taking more than what shall be so assessed, shall forfeit for every such Offence, 5*l.* to be levied by Distress and Sale of Goods, by Warrant of two Justices, to the Use of the Party grieved.

And here, upon an Action for executing this Act, the Defendant may plead the General Issue, and recover double Costs.

But none shall be punished for any Offence against this Act, unless he be prosecuted within six Months after the Offence committed; nor shall any Person

Person punished by Virtue of this Act, be punished for the same Offence by Virtue of any former Law.

Coachmen.

Rates for Hackney-Coachmen.

Vid. Stat. 1
Geo. 6. 57.
and Appendix,
Tit. Carman,
p. 39.

By the Statute of 5 & 6 W. & M. cap. 22 it is enacted, That no Hackney-Coachmen or Driver shall take for his Hire in London, or ten Miles thereof, above ten Shillings for a Day, and reckoning twelve Hours to the Day; by the Hour not above 1 s. 6 d. for the first Hour, and 1 s. for every Hour after.

And that no Person shall pay from any the Inns of Court, or thereabouts, to any Part of St. James's or City of Westminster, (except beyond Twittlestreet) above 1 s. and the same Prices from the same Places to the Inns of Court or thereabouts; and from any of the said Inns of Court, or thereabouts, to the Royal-Exchange, 1 s. and if to the Tower of London, or to Bishopsgate-street, or Aldgate, or thereabouts, 1 s. 6 d. and so from the said Places to the Inns of Court, as aforesaid, and the like Rates from and to any Place at the like Distance with the Places beforementioned.

And if any Coachman shall refuse to go at, or exact more for Hire than the Rates hereby limited, he shall for every such Offence forfeit 40 s.

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The Commissioners may make By-Laws for regulating *Hackney-Coaches* in the Streets, and to annex Penalties.

The Commissioners may also appoint 175 and no more of the *Hackney-Coaches*, to ply, stand, or drive on the Lord's Day, within the Bills of Mortality only, so as the whole Number of 700 may be employed successively.

And if any *Hackney-Coach* shall ply, stand, or drive upon the Lord's Day, other than such as shall be so appointed, as aforesaid, or any where else within the Bills of Mortality, the Owner of such *Coach* shall forfeit 5*l.* and the Commissioners are to publish a List of such as shall be so appointed.

All Offences against this Act (other than the Offences of the Commissioners) shall be determined by the Commissioners, or any three of them, upon Oath of one or more credible Witnesses (the Party accused being summoned to make his Defence) or upon the Confession of the Party offending; and one Moiety shall be to the King, and the other to the Informer.

Coal Sellers, and Sellers of Fuel, &c.

By Stat. 16 & 17 Car. 2. cap. 2. all Sorts of Sea-Coals brought into the River *Thames* and sold, are to be sold by the Chaldron, containing 36 Bushels heaped, and according to the Bushels sealed for

for that Purpose at *Guildhall, London*, and so proportionably.

All other Coals to be commonly sold by Weight after 112 Pounds to the Hundred, upon Pain of Forfeiture of all the Coals otherwise sold, or exposed to Sale by any Woodmonger, or Retailer of Coals, and the double Value thereof, to be recovered in any Court of Record, or by Complaint to the Lord Mayor of *London*, and Justices of the Peace within the City and Liberties, or any two Justices of the Peace of the several Counties, where such Coals shall be exposed to Sale, who on due Proof upon Oath, may convict the Offenders, and give Warrant under their Hands and Seals for levying the Forfeitures, one Half to the Person complaining, the other Half for the Poor, or Repairing Highways within the same Parish, or any other adjoining Parish, by their Direction or Warrant.

The Lord Mayor, and Court of Aldermen of *London*, and Justices of Peace in their several Counties, or any three of them (one *Quor.*) may set Rates or Prices upon such Coals to be sold by Retail, allowing competent clear Profit to the Retailer.

If any Ingrosser or Retailer refuse to sell, as aforesaid, they may appoint Officers or other Persons to enter into any Wharf or Place where such Coals

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are

are stored, and if refused, taking a Constable, force Entrance, and sell the said Coals at such Rates, rendering the Money to the Ingrosser or Retailer, necessary Charges deducted.

Provided that no Person having Interest in any Wharf used for receiving or uttering Coals, or trading by himself, or in any other's Name, Ingrossing or Selling Coals, shall intermeddle in setting the Prices thereof.

The former Constitutions for regulating the Measures and Prices of Coals are revived, continued, and made perpetual by Stat. 7 and 8, *W. 3. cap. 36.*

Owners of Vessels *English* built, and belonging to the Subjects of *England*, of which the Master is an *Englishman*, Trading with Coals to and from *Newcastle*, or the Parts adjacent, or to *Wales, London*, or any Part of *England*, may navigate their Vessels with as many Foreign Seamen as the Master or Owners shall think fit, during the present War, 2 *W. & M. Sess. 2. cap. 7.*

By 6 & 7 *W. 3. 10.* Commissioners are to be appointed for measuring and marking all Keels, Pan-Keels, Pan-Boats, and other Boats, Wains and Carts used for Carriage of Coals at *Newcastle* upon *Tine, Sunderland, Cullercoats, Seaton-slune, Blythe-Nook*, and other Members of the Port of *Newcastle*, after such Manner as shall seem meet

meet to three or more of the said Commissioners, allowing 53 Hundred Weight to every Chaldron of Coals, &c.

Note, That by Stat. 6. *Ann. ca. 22.* It is enacted, That Coals exported in Foreign Bottoms to pay only 10 s. the Chaldron from the End of that Session to the 25th of March, 1715, &c.

And those in *British* Bottoms only 3 s. the Chaldron.

Concerning Wood-Owners.

*Vid. Appendix,
p. 47, 48. Tit.
Woodmongers.*

By Statute of 35 H. 8. 17. In every several Wood called *Coppice* or *Underwood*, which shall be felled at 24 Years Growth or under, there shall be left unfelled for every Acre thereof 12. Standils of *Oak*; and in Case there shall not be so many *Oaks*, that Number shall be made up of *Elm*, *Ash*, *Asp*, or *Beech*, which Standils or Stores shall not be cut down, until they shall bear 10 Inches Square within 13 Foot of the Ground, on Pain that every Owner of such Woods shall forfeit for every Standil not so left 3 s. *left as the Fel-
ling of Coppice
or Underwood
of 24 Years
Growth.* 6 d. and also for every such Standil so left, and afterwards cut down, as much; both which Forfeitures shall be divided betwixt the King and the Prosecutor.

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Under-

Underwoods felled at 14 Years Growth or under shall during four Years next after the 20th of *April*, after their Felling be preserved from Destruction of Cattle, on Pain that the Owners thereof shall forfeit for every Rood thereof unfenced for every Month 3 *s.* 4 *d.* And Underwoods above 14 Years Growth, and under 24, being so felled, shall during six Years next after the 20th of *April*, after such Felling be so preserved as aforesaid, upon the like Pain.

*Underwoods so
be preserved.*

None shall convert into Pasture or Tillage any such Underwood or Coppice containing two Acres or above, and being two Furlongs distant from the House of the Owners thereof, or from the House whereunto such Wood doth appertain, on Pain to forfeit 40 *s.* for every Acre so converted.

*Not to be converted into
Pasture, &c.*

The Owner of Coppices above twenty four Years Growth, shall at the Felling thereof leave twelve such Standils of *Oak*, or otherwise of *Elm*, *Ash*, *Beech*, or *Asp*, as aforesaid, on Pain to forfeit 6 *s.* 8 *d.* for every Standil not so left, and shall not cut them down before they be of two Years Growth, on Pain of 6 *s.* 8 *d.* for every one so cut down. And farther, shall preserve such Underwood seven Years after their Felling from the Destruction of Cattle by Fencing, on Pain to forfeit for every Rood

*Standils how
left upon Coppices
above 24
Years Growth.*

How to be preserved.

Roop thereof unfenced for every Month 3 s. 4 d.

Howbeit the Owner of such Under-woods may fell such Standards afore-said for his own Use for building, repairing, inclosing and mainraining of Houses, Orchards or Gardens, or for pailing or railing or inclosing of Parks, Forests, Chafes or other Grounds, or for repairing of Waterworks, Dams, Bridges, Floodgates or other Vessels, notwithstanding this Act.

Where there is such a Wood or Coppice wherein others have Common, the Lord (Owner of the Soil) ^{Agreement where there are Common-ers.} shall not fell or cut the same (except to his own Use) before he and the Commoners shall agree in the setting a fourth part thereof, to be severally inclosed for the Lord's Use; and

in case they cannot agree thereupon, two Justices of Peace appointed by the more part of the Justices in Sessions, shall have Power to call together twelve of the Commoners and Inhabitants there, and with the Lord's and their Consent to set out the 4th part thereof, to be severally inclosed by the said Lord within one Month after, and then to be felled at his Pleasure, and also to be subject to the afore-said Laws of other Coppices, upon such Penalties as aforesaid: Only if any Beast be suffered to come into such fourth part, within 7 years after

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they are felled, the Owner of such Cattle shall forfeit for every Beast 4*d.* and if the Owner of such Wood or Coppice cut down any Trees or Underwoods there contrary to the Form aforesaid, he shall forfeit for every Tree so cut down 6*s.* 8*d.* The said Forfeitures are to be recovered in any Court of Record, to be divided betwixt the King and the Prosecutor.

Forfeitures divided.

Here during the said seven Years next after Felling of such fourth part, the Commoners shall be excluded for commoning therein; so also shall the Lord be debarred to common in the Residue; but after the said seven Years expired, both the Lord and Commoners may intercommon in the whole as they did before the Division, provided, that every one may fell and inclose all such his Coppices, or Underwoods in waste Grounds, as before this time have used to be inclosed and preserved for the Maintenance of Wood and Underwood, notwithstanding this Act. *Vide postea.*

Commoner excluded of Common there.

Liberty in waste Grounds.

Common where the Lord sells not in due time.
The Commoners also (in case the said Lord do not sell his fourth part within four Months after such Division) may common in the said part until it be felled.

This Act shall not extend to Underwoods in the Wild of *Kent, Surrey* and *Sussex*, save only to the common Woods there. Neither

Neither shall it extend to any Timber-Trees growing within two Miles of the Sea in *Cornwall*, dead at the Top, or taken by the King's Commission; neither shall any Offender be punishable by this Act, unless he be prosecuted within one Year after the Offence committed.

None shall break or destroy any Fence or Hedge made for the saving of any such Woods of Underwoods, on Pain of 10 s. neither shall any suffer his Swine (of the age of ten Weeks or above) to go or run in any such Grounds or Woods unringed, or unpegged, on Pain to forfeit for them 4*d.* a-piece; which said Forfeitures (in the King's Woods) shall be divided betwixt the King and the Finder; but (in other Woods) betwixt the Owner of the Field and the Prosecutor. Underwood in a Park shall be preserved by Fencing, only four Years after the Felling thereof.

If such Woods happen to be destroyed by the means of a Stranger, and not by the Owner himself, or by his Neglect; the Stranger shall be subject to the Penalties of this Act, and not the Owner.

Yearling Colts or Calves, may be put into such Woods within two Years after the Felling thereof.

By the Statute of 1 *Eliz.* 5. None shall convert or employ to Coal or <sup>Not to be used
for Charcoal,</sup> other &c.

other Fuel, for making of Iron, any Timber-Trees, or Trees of Oak, Beech or Ash, of the Breadth of a Foot square at the Stubs, and growing within 14 Miles of the Sea, or of any Part of the *Thames, Severn, Wye, Humber, Dee, Tine, Tees, Trent* or other navigable Rivers, on Pain to forfeit 40*s.* for every Tree so converted, to be divided betwixt the King and the Prosecutor.

This Act shall not extend to *Sussex*, the Wilds of *Kent*, or the Parishes of *Charlewood, Newdigate* or *Leight*, in the Wild of *Surrey*.

Exception.

Woods to be inclosed.

By the Statute of 13 *Eliz.* 25. All Woods or Coppices intended by the Statute of 35 *H.* 8. 17. to be inclosed, and in the Springs thereof preserved, shall be so saved by the Space of two Years more than in the several Clauses of the said Act is severally limited, according to the Age of such Woods felled, upon such Pains as in the said Act are contained; and none shall put any Cattle into any such Coppice Woods, from the Time of the Fall, until the end of five Years; nor from the end of five Years, any Cattle but Calves and Yearling Colts, only until the end of six Years, if the Wood was under fourteen Years Growth at the last Fall; or until the end of eight Years, if it were above fourteen Years Growth; and this Addition shall continue as long

long in Force as the said Statute of 35 H. 8. 17.

By the Statute of 23 Eliz. 5. None *Where not to* shall convert into Coal or other Fuel, *be converted* for the making of Iron or Iron-metal, *into Coal or* any Wood or Underwood growing *Fuel.* within the Compass of 22 Miles of *Vid. Appendix.* London, or the Suburbs thereof, or of *P. 47, 48.* the River of Thames from Dorchester in the County of Oxon downwards, or within four Miles of the foot of the Downs betwixt Arundel and Pemsey in the County of Sussex, or of Winchelsey or Rye, or within two Miles of Pemsey, or three Miles of Hastings, on Pain to forfeit for every Load so converted 40 s. to be divided betwixt the Queen and the Prosecutor.

This Act shall not extend to any *Exception.* Woods growing in any such Part of the Wilds of Surrey, Sussex or Kent, within 22 Miles of London or Thames, as is distant above 18 Miles from London or Thames.

No new Iron-works shall be erected within 22 Miles of London, 14 Miles *No Iron works, where, &c.* of Thames, or 4 Miles of the said Downs, Pemsey, Winchelsey, Hastings, or Rye, on Pain of 100 l. to be employed as aforesaid.

This Act shall not extend to the *Exception.* Woods of Christopher Darrel, Gent. in Newdigate, in the Wild of Surrey.

By the Stat. of 27 Eliz. 19. None *Where no Iron-works shall be made.* shall make or set up within the County

ty of *Sussex, Surrey or Kent*, any Iron Mill, Furnace, Finary or Blomary, for the making of Iron or Iron-metal, other than upon some old Bays or Pens, whereupon such Works have been lately standing; or else upon such Land where such Works may be continually furnished with sufficient Supply of the Party's own Woods, growing upon his own Soil, being his in Fee-simple, Fee-tail, or for Life without Impeachment of Waste; nor shall convert to Coal or other Fuel, for the making of such Iron or Iron-metal, any sound Timber-Tree of Oak, Ash or Elm, which shall bear a Foot Square at the Stub or any Part thereof, on Pain to forfeit for every such new Work set up, 300 *l.* and for every Timber-Tree so converted 40 *s.* to be divided betwixt the King and the Prosecutor.

*Timber not to
be converted
to Coal.*

**Exception of
Cops and Offal.** Howbeit the Cops and Offal of such Timber-Trees may be converted to Coal for the Purposes aforesaid, within the Wilds of *Surrey, Sussex and Kent*; so as it be not within 18 Miles of *London*, 8 Miles of *Thames*, 4 Miles of *Rye* or *Winchelsey*, 3 Miles of *Hastings*, or 4 Miles of the foot of the *Downs*, betwixt *Arundel* and *Pemsey*, aforesaid.

Forest of Dean. The Statute of 20 *Car. 2. cap. 4.* is an Act for the Increase and Preservation of Timber within the Forest of *Dean*.

By

Cutting, stealing, or spoiling of Woods, &c.

By the Stat. of 42. Eliz. and 15 Car. 2. If any shall be convicted by his own Confession, or by Testimony of one Witness upon Oath, before one Justice of Peace or head Officer, to have unlawfully cut or taken away any Grain growing; robbed any Orchard or Garden; digged up, or taken any Fruit-Trees; broken any Hedges, Pales, or other Fences; cut or spoiled any Woods or Underwoods, standing and growing, or the like; or to have been Accessary thereunto, he shall, within *Penalties.* such Time as the Justice or head Officer shall appoint, pay for the first Offence to the Party grieved, so much as the Justice or head Officer shall set down: And in case the Party offending be not able to pay it, or do it not according to Order, then the Offender is by them, or either of them (respectively) to be committed to the Constable, or other Officer, of the Place where the Offence was committed, or the Party apprehended, to be whipped; and so for *Punishment.* every Offence afterwards, and proved as aforesaid, the Offender is to have the like Punishment of Whipping.

If the Constable refuse or neglect to whip the Offender, any such Justice of Peace, or head Officer, may commit him to Prison without Bail, till he whip, or cause to be whipped, the Party offending, as above declared.

No

No Justice may execute this Statute for Offences done to himself, unless he be associated with one or more Justices of Peace whom the Offence doth not concern. Stat 43 *El. ch. 7.*

Now the Statute of 15 Car. 2. is an additional Act to this, as follows:

That every Constable, Headborough, or other Person, every County, City, Town Corporate, or other Place, where they shall be Officers or Inhabitants, shall have Power to apprehend, or cause to be apprehended such as they suspect for having, or carrying, or any Ways conveying any Burden or Bundles of any Kind of Wood, Underwood, Polls or young Trees, Bark or Bast of Trees, or any Gates, Stiles, Posts, Pales, Rails, or Hedge-wood, Broom or Furze.

*Au'thority of
Officers, to ap-
prehend Wood-
stealers, &c.*

If any Person be suspected to have any such Woods, Under-woods, &c. any Officer by Warrant, under the Hand and Seal of one Justice, may enter by Vertue thereof, into the Houses, Out-houses, Yards, Gardens, or other Places, belonging to such Persons; and wheresoever they find any such, they may apprehend those Persons, and also those who are suspected to have cut and taken the same, and carry them before a Justice of the Peace of the County, City, &c. And if he in whose Custody such Wood, &c. is found, cannot give a satisfactory

*Power to
search Houses,
&c.*

Answer

Answer and Proof to the Justice of his buying the same, he shall be deemed a Convict within the Meaning of the Statute of 43 Eliz. Forfeiture for the first Offence, as the Justice shall appoint, not exceeding 10*s.* and Commitment to the House of Correction or Whipping, for not performing the Justices Order; for the second Offence, House of Correction, and hard Labour for one Month; for the third, to be deemed an incorrigible Rogue.

Buyers of such stolen Wood may by Buyers, &c. be ordered to pay treble Value to the Owner, &c. to be levied by Distress and Sale, and for Want of such Distress, Commitment to Gaol without Bail for a Month.

Not to be punished by this, if punished by any other Statute for the same Offence, nor to be questioned by this Statute, unless within six Weeks after the Offence committed.

Tanners, Curriers and Shoemakers, 6 Mod. 165,
166.

and Leather.

Appendix p. 39.

First concerning the Tanner.

By Stat. 1 Jac. 1. 22. None shall Tanner, who be Tanners, but such as have served ~~may be~~ ^{may be} out seven Years as Apprentices, or hired Servants in that Trade, or the Widow or Children of a Tanner, having a Tan-Fat left them, and having been brought up in that Profession by

by the Space of four Years, in Pain to forfeit all the Leather they tan, or the full Value thereof. Neither shall any Butcher be a Tanner; (as before in Burchers.)

*Tanner not to
be a Cutter,
&c.*

A Tanner shall not use any other Trade of cutting or working Leather at one and the same Time, upon Pain to forfeit the Hides and Skins, or the Value thereof. Nor consequently he that cuts Leather can be a Tanner under the like Penalty.

*Forfeiture for
bad Tanning.*

The Tanner that over-limes his Hides, or useth in his Tanning any Thing, save Ash-bark, Oak-bark, Tap-wort, Malt, Meal, Lime, Culver-Dung, or Hen-dung; or suffers them to be frozen, or to be parched with Fire or Sun; or tans such as are rotten by long lying, or otherwise; or continues not outer Soal-Leather twelve Months in the Woozes, and upper Leathers nine Months; or doth negligently work his Hides in the Woozes, not renewing and strengthening them, as often as Need shall require; or doth work them in any other Sort than is by Statute limited, shall forfeit every Hide so tanned and put to Sale, or the full Value thereof. See after for Fats and Woozes.

Soal-Leather.

No Tanner shall by Mixtures raise any Hide for Soal-Leather, which shall not be fit for that Use, in Pain of forfeiting the same.

I

None

None shall put to Sale any Leather insufficiently tann'd or dried, in Pain to forfeit the whole, or at least so much as shall be so misused.

Whosoever shall put to Sale or de-^{Untann'd Leather, red iber, &c.} part with any untann'd Leather, red and unwrought, (but only in open Fair or Market, in the Place there-fore prepared) unless it hath been first lawfully searched and sealed according to the Statute, or shall offer to put to Sale any Leather before it be searched and sealed, according to the Statute, shall forfeit for every Hide or Piece of Leather 6 s. 8 d. and for every Dozen of Calves-Skins or Sheep-Skins 3 s. 4 d. and the Hides or Skins, or the Value of them. See after.

The Forfeitures of this Statute a-^{Forfeitures divided.} gainst the Tanner are to be divided in three Parts; whereof the King is to have one, the Prosecutor another, and the City, Corporation, or Lord of the Liberty, the third.

And by Stat. 4 Jac. 1. ca. 6. none shall sell tanned Leather by Weight, in Pain to forfeit the same, or the Value thereof; to be divided between the King and the Prosecutor.

But by 1 W. & M. Sess. 1. cap. 33. All Persons whatsoever, dealing or work-^{Liberty to buy red tann'd Leather un-} ing in Leather, may buy all sorts of red tann'd Leather in any open Fair or Market, curried or uncurried, the same being first search'd and

feal'd according to Law, and may sell the same again in their Shops, and convert it into other made Ware, (which by the Stat. 13 & 14 Car. 2. cap. 7. he was first obliged to have curried.)

*And Leather
by Weight.*

Also any Persons may buy or sell Leather, Hides or Skins by Weight.

*Vide appendix
p. 39.*

Concerning the Currier.

*Currier his
duty.*

Next, as concerning the Currier; he is bound by the same Statute of 1 Jac. 1. 22. not to curry any Hide or Skin which is not sufficiently tann'd and dried, and that in his own House, situate in some Corporate or Market Town, and not elsewhere: Also if he hurt or spoil any Leather by scalding, shaving or gashing it; in either Case (except gashing) he shall lose for each Skin 6 s. 8 d. and for gashing double so much to the Party grieved, as the Leather is impaired.

Forfeiture.

*Currier in
London.*

And Note, that no Artificer within London, or three Miles of the same, shall put any Leather to be curried, save only to some person Free of the Company of *Curriers* in London, in Pain to forfeit the same, or the Value thereof.

And none within the aforesaid Jurisdiction of London, shall use or put into any made Wares, any curried Leather, before the same be searched and sealed, in Pain to forfeit for every Hide

*Curried Leather to be
searched.*

Hide or Skin 6 s. 8 d. and also the Value of every such Hide or Skin. The *Currier* must request the Company to search and seal his Leather curried, or he shall forfeit for every Hide not so searched and sealed, 6 s. 8 d.

No *Currier* shall be a *Tanner*, *Cordwainer*, *Shoemaker*, *Butcher*, or other Artificer for cutting Leather, both at one Time, upon Pain to forfeit 6 s. 8 d. for every Skin.

No *Currier* a
Tanner, &c.

If a *Currier* shall refuse to curry within eight Days in Summer and sixteen in Winter, any Leather brought to him by any Cutter of Leather, or his Servant, bringing with him good Stuff for Liquoring the same, after he shall or may take it in hand, he shall forfeit for every Hide or Piece 10 s.

Currier refusing to curry.

The Lords of Fairs and Markets are to appoint and swear Searchers, Sealers and Tryers of Leather, according to the Statute, upon Pain of 5 l.

Appointing of
Searchers and
Tryers.

And if the Tryer, &c. shall not forthwith do their Duty, they shall also forfeit 5 l. for every Default.

Forfeitures by
Tryer, &c.

If a Searcher or Sealer omit his Duty, or take Bribes, he shall forfeit for every Offence, for not Searching or Sealing 40 s. and for every Bribe and Exaction of Fees 20 l. and upon Refusal to execute the said Office, 10 l.

And if any shall withstand, or deny the Searcher, he shall forfeit for every Time 5 l. See more in the Act.

I i 2

As

*Tar Fats,
Wooses, &c.*

As concerning their Fats, and Wooses.

The Statute 1 Jac. 22. says, that whosoever shall set his Fats in Tans, Hills, or other Places where the Wooses or Leather put therein shall or may take any unkind Heat; or shall take and put any Leather into hot or warm Wooses, shall forfeit for every Offence 10 *l.* and stand on the Pillory three Market-days.

Forfeiture.

*What is re-
puted Leather.*

Note, the Hides or Skins of Ox, Steer, Bull, Cow, Calf, Deer, Goats and Sheep, being tann'd or taw'd, and Salt-Hides, are reputed Leather within the Letter of this Statute.

By 4 Jac. 1. cap. 6. there shall be no Penalty for housing, buying or selling Sheep-Skins unsealed.

Justices of Assize, of Gaol-delivery and of Peace, Stewards of Leets, the Mayor of London, and Head Officers within their several Precincts, have Power to hear and determine these Offences against 1 Jac. 1. ca. 22.

By 13 & 14 Car. 2. cap. 7. The Tanner that shaves, cuts and rakes his Upper Leather-Hides all over, and the Necks of his Backs and Buts, shall forfeit all the said Leather, Backs, Buts or Calves-Skins, so shaved, cut or raked, or the Value thereof; and the Searchers and Sealers may seize the same.

The

The Forfeitures may be recovered by Action of Debt, Bill or Plaint, &c. in the Courts of *Westminster*, or in any other Court of Record, nor shall the same be removed thence; one Half to the King, the other to the Informer.

Next concerning the *Cordwainer* or *Cordwainer or Shoemaker*; as by 1 *Fac.* 1. 22.

That they shall make their Boots, Shoes, &c. of good and sufficient Stuff, *To make good sheet, &c.* few them well, and not put them to Sale upon *Sundays*, in Pain to forfeit for every such Default or Offence 3 s. 4 d. and also the full Value of all Wares otherwise made or sold.

These Forfeitures of *Currier* and *Shoemaker* are to be divided in three Parts, as in the Case of the *Tanner*.

And note, That this Statute makes *Liberty*. it lawful for all Artificers (save only *Shoemakers*, between *September* and the 20th of *April*) to use dry, curried and friz'd Leather, being well tann'd, according to this Act: But this Act shall not extend to *Wales*

This Act also prohibits the Transporting of *Leather*, as does the Statute of 13 & 14 *Car.* 2. cap. 7. (except *Boots, Shoes or Slippers*.)

But the Statute of 20 *Car.* 2. cap. 5. 20 *Car.* 2. says, It shall be lawful for any Person cap. 5. to export into *Scotland, Ireland*, or any Foreign Parts, all Sorts of *Leather, Sheep-skins* or *Calve-skins* tann'd, tawed

I i 3 or

or dressed, paying 12 *d.* for each Hundred Weight.

And by the Statute of 7 & 8 *W. & M. c. 36.* and 1 *Ann. c. 13.* this last Act is continued from *March 1703* for seven Years, and from thence to the End of the first Session of Parliament next ensuing. *Quære* if it be still continued.

Also *note*, That by Stat. 1 *W. & M. Sess. 1. cap. 33.* It is enacted, That every Hide, Skin, or Piece of tanned Leather, shaved or liquored, and well curried according to Stat. 1 *Fac. 1.* shall be adjudged to be the made Ware and Manufacture of the Currier, and subject to the View, Search, and Seizure of the Master of the several Mysteries of the Cordwainers, Curriers, Girdlers and Saddlers of the City of *London*, or the major Part of them, as by the said Statute is provided, and shall be liable to be seized, and subject to the same Penalties, as other Wares insufficiently made of tanned Leather, are liable and subject by the Statute.

Nothing herein expres'd, shall give any Power to the Master and Wardens of the Company of Curriers to search or seize any Leather, Hide, or Skin, but such as shall be curried in *London*, or within three Miles thereof, by some Members of their own Company ; nor in any other Place, but the open

open Market-place, or in the Shops, Houses, or Ware-houses of such Curriers.

Concerning Distillers.

Vide Appendix, p. 39.

Distillers keeping Places for the Distilling of *English* Brandy and Strong-waters from malted Corn, and other Shop-keepers dealing more in other Goods than Brandy and Strong-waters, not suffering Tippling in their Houses; as to such the Clause in 12 *W. 3. cap. 11*. For taking Licences, as Ale-house-keepers is repealed by 1 *Ann. Stat. 2. cap. 14.*

If any import *French* Brandy, or deliver the same out of the Vessel, the Duty not paid or secured, or without Licence from the Officer; they, their Aiders, Assistants, or Concoalers thereof, shall forfeit the Goods and double the Value; one Moiety (Charge of Suit deducted) to Her Majesty, the other to the Informer, in any of Her Majesty's Courts of Record. *Ibid.*

If the Officer of Customs connive French at, or be concerned therein, or do not *Brandy*, give Notice to the Commissioners of the Customs or Excise, or compound without Licence; he shall be incapable of Office in the Revenue, and forfeit 500 *l.* to be recovered, as aforesaid. *Ibid.*

I i 4 Concerning

Concerning Malsters, Millers, &c.

Care to be taken.

By 2 *Ed.* 6. 10. Special Care ought to be taken in making of Malt, and due Time asserted; for no Malster ought to employ less Time than three Weeks in making and drying, except in *June, July, and August*, and then seventeen Days will serve, and this under the Penalty of 2 s. for every Quarter of Malt, otherwise ordered and put to Sale, betwixt the King and the Prosecutor.

Mixing bad with good.

Such as mingle good Malt with bad to sell, shall forfeit to the King and Informer for every Quarter so put to Sale, 2 s.

Well trodden, &c.

Also whosoever shall put to Sale any Malt, not being well trodden, (first rubb'd and fann'd) shall forfeit for every Quarter 20 d.

Suit, when.

But these Offences must be sued or presented within one Year after the Offence; and Constables and Bailiffs may search for faulty Malt, and sell it by the Justices Order.

Miller.

A Miller must take no excessive Toll, nor by heaped Measure. *West.* 1. 30.

Hops.

By the Statute of 1 *Jac.* 1. 18. None shall bring or cause to be brought into this Realm from foreign Parts, any Hops deceitfully mix'd with any Soil whatsoever, on Pain to forfeit the Hops so brought in; neither shall any buy such Hops (so brought in or growing within the Realm) and employ them

them in Brewing, on Pain to forfeit the Value thereof: Which said Forfeitures shall be divided betwixt the King and the Prosecutor.

Statutes concerning Drapery, &c.

The Statute of 12 Car. 2. cap. 22. Colchester concerns making of Bays in Colchester, *Bays.* and is almost particular to that Place.

It also enacts, That *Bays* bought or *Vid. Appendix,* carried out of the Town, before they p. 49. 50. are searched, or offered to be carried out, *Tit. Woollen- Manufacture.* shall be confiscated, the one Moiety to him that will seize, the other to the Poor of the Parish where seized.

The Statute of 13 & 14 Car. 2. cap. 5. is for Regulating the Making of *Norwich* Stuffs, in *Norwich* and *Norfolk*, most of which Forfeitures are for the Use of the Poor of the Trade.

And if any use the said Trade, having not served as Apprentices seven Years, shall forfeit 40 s. for every Month; Half to the King, and Half to the Prosecutor, to be recover'd in any Court of Record.

And 22 & 23 Car. 2. cap. 8. concerns the making *Kidderminster* Stuffs.

Note, That by a late Act made in *The Regulation* the Eighth and Ninth Year of his of Blackwell-late Majesty, for restoring the Mar-Hall. ket at *Blackwell-Hall* to the *Clothiers*, it is enacted, That after the first of *May*, 1697, the Governours of the said Hall

Hall shall observe the set Times and Rules for keeping and governing of the Market.

That the said Market shall begin and be held on every *Thursday, Friday, and Saturday*, from eight of the Clock in the Forenoon, until twelve in the same Forenoon, and from two in the Afternoon until five in the same, to be known by the ringing of the Market-Bell there.

The Market to be continued weekly, except on Days of Humiliation or Thanksgiving, set apart by Authority; and the Keepers of the Hall not to permit any Buying or Selling of any Woollen Cloth there on any other Days or Hours, than aforesaid, upon Penalty of 100 *l.*

That no Factor or Person, other than the Owner of the Cloth shall sell, cause to be sold, or expose to Sale out of the said Market, any Cloth consigned or directed by the Owner thereof, to be brought to the said Market, or to any Factor there, to be sold, upon the Penalty of 5 *l.* for every such Cloth so sold.

The Hall-keepers, Clerks and Master Porters are to keep Registers, and enter the Names, Surnames and Places of Habitation of the Owner, Buyer and Seller of Cloths with the Time of Sale thereof, and likewise of the Factor or Person, (other than the Owner) buying

ing or selling the same, to satisfy the Clothiers, their Agents and Servants, how their Cloaths are disposed, to which they may at all convenient Times have Recourse without Fee or Reward; the Party neglecting, forfeits 10*l.* for every Offence.

The Person Selling such Cloth, (except the Owners) shall within twelve Days after the Sale and Delivery, take a Note from the Buyer of the Cloth so sold, and the Sum payable to the Owner, and deliver it to the Owner on Demand, or his Order, with Notice of the Buyer's Abode subscribed, on Pain to forfeit to the Owner for every Neglect, or Refusal of Delivery, double the Value of the Cloth so sold.

If the Buyer upon Trust, after eight Days of Sale and Delivery refuses to give such Note, he shall forfeit to the Owner 20*s.* for every Offence for every Cloth so sold.

The Cloth not actually returned within eight Days after Delivery, shall be taken to be approved of by the Buyer.

The Forfeitures may be recover'd by Action of Debt, Bill, Plaint or Information, in any of his Majesty's Courts of Record: One Moiety to the King, the other to the Informer, if not otherwise disposed; and if the Owner neglects to sue for six Months after the

the Offence committed, any other Person may sue for the Forfeitures, to which the Owner was intitled.

*Duty on white
Woollen Cloaths
exported.*

Note, That by an Act 6 Ann. 8. for encouraging the Dressing and Dying of Woollen Cloaths within this Kingdom, it is enacted, That a Duty of 5 s. shall be paid to her Majesty for every white Woollen Cloath, commonly called Broad-Cloath, which shall be exported out of this Kingdom into foreign Parts.

Liberty to ex-

port white

Woollen Cloaths.

And by another Statute *ead. Anno,* c. 7. to prevent Doubts that may arise from Stat. 14 and 15 Hen. 8. touching Worsted - Weavers of *Yarmouth* and *Lynn*: Their Shearing, Dying and Colouring Cloths and Worsteds; and also from a Patent granted 6 Eliz. to the *Hamburg* Company for ever, to export Cloath, though not wrought or dressed: It is enacted, That it may be lawful for any Person or Persons whatsoever, to export out of the Kingdom of *Great Britain*, or Dominion of *Wales*, any white Woollen Cloath whatsoever, there made or manufactured.

Wool,

Wooll, concerning it.

*Several Constitutions about the Buying,
Selling and Ordering of Wooll.*

Every Man, as well Stranger as other, may buy Wooll, as he can agree with the Seller of it. 18 *Ed.* 3. Stat. 2. 3.

No Wooll shall be bought by Fraud, to abate the Price of it, upon grievous Forfeiture; also Balances and Weights for Wooll (*viz.* of the Sack, Half-sack and Quarter; Pound, Half-pound and Quarter) shall be sent to all the Sheriffs of *England*, according to which, all Persons shall make theirs without Fee or Reward; and none shall buy or sell by any other Weights, on Pain to be fined at the King's Will. 31 *Ed.* 3. 2.

No Buyer of Wooll shall make any other Refuse of it than has been heretofore used, *viz.* of Cot, Gare and Viltain-Floeces; and every Sack shall contain 16 Stone, and the Stone 14 Pounds, according to the Standard of the Exchequer: Also all Wooll, Fells and Leather bought into the Country, shall be brought to the Staples, and there shall remain fifteen Days at least; and those that cannot be sold in that Time, shall be brought to the Ports ordained for the Staple, to be transported beyond Sea, paying the due Customs and Subsidies, *viz.* for a Sack of Wooll 50 s. for 300 Wooll-fells 50 s. and for a Last of Leather 100 s. 31 *Ed.* 3. 8.

The Trades-Man's Lawyer, and

No Wooll vendible shall be lodged, shewed or sold within 3 Miles of the Staple: Howbeit, every one but a Merchant may lodge, sell, and shew his Wooll, being of his own Growth in his own Houle, or elsewhere, at his Pleasure.

No Custom or Subsidy shall be paid for Canvas to pack Wooll in. 34 *Ed.* 3. 19.

No Imposition or Charge shall be put upon Wooll, Wooll-fells, or Leather, other than the Custom and Subsidy granted to the Crown, without Assent of Parliament. 36 *Ed.* 3. 11. and 45 *Ed.* 3. 4.

None shall buy or sell Wooll at more Weight than 14 Pounds to the Stone, on Pain to forfeit the Double to the Party grieved, and to make Fine to the King. 13 *R.* 2. 9.

None shall buy Wooll by these Words, *Good Packing*, or the like, on Pain that the Broker shall suffer half a Year's Imprisonment, and the Buyer shall make Fine to the King, and recompence the Party grieved his double Damages; neither shall any cause Wooll to be cocketted but in the Owner's Name, on Pain to forfeit the same.

Alien.

No Alien shall cause any Wooll, which he intends to convey out of the Realm, to be forced, clacked, or bearded; on Pain to forfeit the same, together

ther with the double Value thereof, and besides to be imprisoned.

Also every Wooll-packer shall make *Wooll packers.* good and due Packing, without inwinding within the Fleece at the rowling thereof, nor put therein any Locks, Pelt-wooll, Tar, Sand, Earth, Glafs, or Dirt; ~~on~~ Pain that the Party grieved, shall lay his Action of Trespass and Deceit, against such Offender at the Common Law.

None shall wind any Fleece of Wooll *Deceit in Wooll winders.* not sufficiently rivered or washed, nor wind therein any Clay, Lead, Stones, Sand, Tails, deceitful Locks, Cot, Comber, Lambs-Wooll, or any other Thing whereby the Fleece may be more weighty, to the Deceit of the Buyer; on Pain that the Seller of any such deceitful Wooll, shall forfeit for every such Fleece 6*d.* to be divided between His Majesty and the Finder. 23 H. 8. 17.

This Act shall not extend to such *Exception.* Counties, where the Inhabitants have not customably used to river, or wash, their Sheep before they be shorn, nor to any Persons, who have used to sell their Wooll by Tale or Number of the Fleeces, and not by Weight.

Every Person dwelling in *Norfolk* or *Norfolk, &c.* *Norwich*, may buy Woolls of *Norfolk* Growth, so as they sell, or retail the same in some open Market or Place in *Norfolk* or *Norwich*, to some Person or

or Persons, dwelling also there, that will there spin the same. 1 Ed. 6. 6.

Hallifax.

Any Inhabitants of *Hallifax* may buy Wooll (otherwise than by engrossing and forestalling) so as they carry the same to *Hallifax*, and there sell them to such poor People of that or other Parishes adjoining (as to their Knowledge) shall work them in Cloth or Yarn, and not to the rich Clothier, nor any other to sell again. 2 & 3 P. & M. 12.

If the Wooll-driver sell his Wools out of *Hallifax*, or if any buy Wools in *Hallifax*, to sell the same unwrought in Yarn or Cloth; every such Offender shall forfeit the double Value of the Wooll so sold or uttered; whereof the King is to have one Moiety, and the Prosecutor the other: And Justices of Peace in Sessions have Power to hear and determine these Offences.

By Stat. 12 Car. 2. cap. 32. None shall export any Sheep, or Wooll, Wooll-fells, Mortlings, Yarn, Fuller's Earth, fulling Clay, nor carry, load, or convey the same to be transported upon several Penalties, as well upon the Owners of Ships, as the Persons that shall convey the same: For which see the Act at large.

By Stat. 14 Car. 2. cap. 18. The like Provision as last above is made, wherein is also inserted Shortlings, Wooll • Flocks, and Tobacco - Pipe Clay. Justices

*Exporting
Sheep, Wooll,
&c.*

Justices of Assize, Gaol-Delivery, and Justices of the Peace, at their Quarter-Sessions, may hear and determine Offences against the said Act.

By Stat. 14 Car. 2. cap. 19. No Wool-Cards, foreign Wool-Cards, Card-Wire, or Iron for Wool-Cards shall be imported, nor used in England or Wales.

Many more are the Acts and Statutes made concerning Wooll, since the Beginning of the Reign of King William and Queen Mary. Which are too many to be here inserted, and which you may read in *Washington's Abridgment of the Statutes. Tit. Wooll.*

Gold and Silver.

If any Goldsmith's Work be marked Forfeiture by and allowed by the Wardens or Masters of that Mystery, and be afterwards found faulty, the Wardens and Corporation of the Mystery, shall forfeit the Value of the Thing so sold, or exchanged.

The said Forfeitures are to be divided betwixt the Queen and the Party grieved.

The Statute of 5 H. 4. c. 4. against multiplying Gold or Silver is repealed. By 1 W. & M. Sess. 1. cap. 30.

Provided that all Gold and Silver Gold and Silver that shall be extracted by the Art of *extracted by* melting and refining Metals, or other *Art.* wise improving them and their Ores, shall

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shall be employed for the Encrease of Moneys, and no otherwise; and that the Place hereby appointed for the Disposal thereof, shall be the Mint in the Tower of London; where they shall receive the Value of their Gold and Silver so extracted. *1 W. & M. Sess. 1. c. 30.*

No Mine of Copper, Tin, Iron or Lead; shall hereafter be adjudged to be a Royal Mine, tho' Gold or Silver may be extracted out of the same. *Ibid.*

Stat. 13 & 14 Car. 2. cap. 31, is against melting down Silver Money of this Realm.

By Stat. 6 & 7 W. 3. cap. 18. He that casts Ingots or Bars of Silver, in Imitation of *Spanish* Bars or Ingots, forfeits the same Silver and Five Hundred Pounds; one Moiety to the King, the other to the Informer.

By Stat. 8 & 9 W. 3. Vessels and Manufacture of Silver, are not to be of less Fineness than that of 11 Ounces and 10 Penny-Weight of fine Silver in every Pound *Troy*; and to be mark'd with the respective Marks appointed for that Purpose, upon Forfeiture of the same.

Silvan

Silver Wire-Drawers, &c.

The Regulation of the Wire-Drawers Trade.

All Silver-Wire for making Gold and Silver-Thread, shall hold 11 Ounces, 16 Penny-weight fine Silver upon the Pound-Troy: Silver-gilt to be made use of by the Wire-Drawers, shall hold 11 Ounces 14 Penny-weight of fine Silver upon the Pound Troy: And 4 Penny-weight and 4 Grains fine Gold, shall be laid upon each Pound of Silver, on Pain of 5 *s. per* Ounce upon the Refiner. 9 & 10 *W. 3. cap. 29.* and 1 *Ann. cap. 17.*

No Gilt-wire to be coloured with Verdigrease, Dead-head, or any forced Colour, upon Pain of 2 *s. 6 d. per* Ounce. There shall be 6 Ounces of Plate to cover 4 Ounces of Silk, not running above 16 Yards to the Penny-weight Troy: For finer Thread, there shall be 6 Ounces of Plate to cover 3 Ounces and a half of Silk, not running above 36 Yards to the Penny-weight Troy. For finer Thread, there shall be 6 Ounces of Plate to cover 3 Ounces of Silk, not running above 90 Yards to one Penny-weight Troy: For all finer Thread, 6 Ounces of Plate for 2 Ounces and a half of Silk. All Plate to be spun close upon well dy'd and

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and light boiled Silk, except Frost run thin, and spun on different coloured Silk, upon Pain of 2 s. 6 d. per Ounce: Every Spinner that shall lay Plate on Silk on other Proportions, is to forfeit 2 s. for every Ounce so spun.

All Metals inferiour to Silver, are to be spun on Thread, Yarn, or Inkle, and not on Silk, upon Pain of 5 s. per Ounce.

No Gold, Silver, Copper, or Bras Thread, Lace, Fringe, or other Work made thereof, shall be imported into this Kingdom, upon Pain of being burnt, and 100 l. to be paid by the Importer for every Parcel.

One Moiety of the Penalties to be to the Queen, the other to the Prosecutor, in her Majesty's Courts of Record at *Westminster*.

Persons sued according to the Tenour of this Constitution, may plead the General Issue; and if Judgment be for them, they shall have treble Costs.

Provided that such Suits be commenced within 6 Months after the Offence.

If any Person sell or offer to Sale any Orrice-Lace mixed with other Materials than Gold, Silver, or Silk, they forfeit 2 s. 6 d. per Ounce.

If any Person sell any Gold or Silver Wire, Thread-Lace, or Fringe, by any other Weight than *Troy*, he shall forfeit 5 s. per Ounce:

None

None shall sell Goods mixed with Gold or Silver-Thread, or Plate contrary to this Constitution, under Penalty of 5 s. per Ounce.

** Weights and Measures.*

By the Statute of 8 H. 6. 5. Every *Weights seal.*
City, Borough and Town within Eng-
land, shall have a common *Ballance*

with common Weights sealed, and according to the Standard of the *Exchequer,* upon the common Costs of the

said Borough or Town, in the keeping of the Head Officer or Constable there, on Pain that the City for such Default shall forfeit 10 l. to the King, the Borough 5 l. and every other Town 40 s.

Justices of Peace, Mayors, Bailiffs and Stewards of Franchises have Power to hear and determine those Offences.

By the Statute of 11 H. 6. 8. In every City, Borough and Town, there shall be a common Bushel sealed, and according to the Standard, in like Manner and Pain, as in the said Statute of 8 H. 6. 5. is specified for a common Ballance.

By 7 H. 7. 4. If a Mayor or chief Officer refuseth or delayeth to seal Measures and Weights according to this, he shall forfeit 40 s. to be divided betwixt the King and the Party grieved,

Officer refusing to seal.

ved, to be recovered by Action of Debt, wherein no Wager of Law shall be admitted.

Justices of Peace have Power to hear and determine the said Defaults.

By Statute 17 *Car.* 1. 19. There shall be one Weight and one Measure according to the Standard of the Exchequer throughout the Realm, and every Measure of Corn shall be stricken without Heap.

By the Statute of 22 *Car.* 2. *cap.* 8. A Clause in a Statute made in the 17th Year of *Car.* 1. That such Measure as is commonly called Water-measure, shall be used as formerly hath been, shall be repealed as to measuring Corn, Grain, or Salt; and if any sell Corn, Grain or Salt, by other Bushel or Measure, than according to the Standard, and the said Bushel stricken even by the Brim, and sealed as this Act directs, shall forfeit 40 s. to be levied in such Manner, and such Penalties for want of Distress to be inflicted, as by the said Act is directed, by Warrant of a Justice of Peace.

If Head Officers of Cities, Boroughs, of Corporations, or Liberties, wilfully suffer any to sell or buy Corn, Grain or Salt by other Measure, or stricken in other Manner, or shall suffer other Measure to be used than this Act directs; or upon Complaint of the Breach of this Statute, shall not punish and

*Corn and Grain-
Measure.*

and reform the same; upon Conviction thereof at the General Sessions of *Neglect of Off.* the Peace, shall forfeit *5 l.* one Moiety *scilicet.* to the Informer, the other to the Poor of the Parish where the Offence is committed, to be levied by Distress and Sale of Goods, and for Want thereof, by Imprisonment till Payment.

At their Charge who shall have the Toll or Profit of the Market where no Toll is, within any City, Corporation, or Market-Town, there shall be one Measure of Brass provided, and chained in the publick Market-place, on Pain to forfeit *5 l.* to be recovered, and levied as by this Act is directed; one Moiety to the Poor of the Parish, another to him that will sue for the same.

Constables may search and examine if any use other Measures, or strike them in other Manner than this Act directs; and if they find any unsealed Measure may break the same, *Unsealed Measures.* and for that and every other Offence against this Act, shall present the Offender at the next Quarter Sessions.

None punished by Verue of this Act, shall be questioned for the same Offence, by Verue of any other Act.

By the Statute of 22 *Car.* 2. *Shaking the cap.* They that buy or sell Corn or Salt by the Bag or without Measuring, being thereto required, or in other Manner than by 22 *Car.* 2. *Measures.* *cap.* 8.

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is directed, and that without shaking the Measure by the Buyer, shall forfeit besides the Penalty of the former Act, all the Corn or Salt, or the Value thereof, to the Persons complaining.

Upon Complaint to one or more Justices of Peace, the Proof shall lie upon the Defendant to make appear by Oath of one or more Witnesses, that they did buy or sell according to this, and the said Act, wherein if he fail, he shall forfeit as by this Act is directed, to be levied by Distress and Sale of Goods, under Hand and Seal of one or more Justice before whom such Conviction shall be; which Penalties shall be distributed, one half to the Poor of the Parish where the Offence was committed, the other to the Informer.

*Proof to lie
upon the De-
fendant.*

In Markets where there is not a Clerk of the Market, the Mayor or Head Officer, or others having the Benefit of such Market, shall seal Measures duly gauged brought for the Purpose, taking no more than by the former Act is appointed.

Sealing Measures.

Salt, Rent, &c.

All they to whom any Salt, Rent-Corn or Tithe-Corn is due, may take them by the like Measures as they were paid before the Beginning of this Parliament.

Note. The former Act of 22 Car. 2. c. 8. gives a Forfeiture upon those who are authorized to mark and seal

feal Measures duly gauged, and mis-^{Forfeitures of} demean themselves in their Office, *viz.* ^{Officers.}

5 *l.* for the first Offence, and 10 *l.* for every other, to be levied as aforesaid. *Note,* The Fee for Sealing a Bushel is 1 *d.* for a Half-bushel or Peck, a Half-penny, and for a Gallon, Pottle, Quart, Pint or Half Pint, one Farthing.

None shall counterfeit another's Mark, nor stamp therewith, without the Owner's Consent, on Pain to forfeit for every such Offence 5 *s.* to be divided as before, and in Case he be not able to pay it, to be set upon the Pillory in the next Market-Town to the Place where he offends, and to suffer three Months Imprisonment without Bail. See the late Act for marking Beer and Ale Measures.

For Coal Measure, &c. *vide ante.* Coals, &c. The Statute of 11 & 12 *W. 3. cap. 15.* was made for Ascertaining the Measures for retailing Ale and Beer.

Ale Measures.

By a Stat. 2 *W. & M. Sess. 2. c. 14. Wine Mea-* it is enacted, That no Person shall utter *sure.* by Retail, by Glass Bottles, or by any other Retail Measure, not made of Pewter, and sealed according to Law, any Wines or other Liquor, or shall sell the same for a greater Price than by the said Act is appointed, and *shall* be convicted by Confession, or the Oath of two Witnesses before a Justice of

of Peace, being prosecuted within thirty Days after the Offence committed, they shall forfeit 50*s.* for every such Offence, which if not paid upon Demand, shall be levied by Distresses and Sale of Goods, by such Justices War-rant to the Constable, Headborough, &c. the Money so levied to be given to the Informer, and for Want of Distress, the Offender to be committed to the Common Gaol till Payment of the Penalty, and all necessary Costs to be taxed by the Justice or Justices, before whom the Conviction was.

But Offenders punished by Virtue of this Act, shall not incur the Penalty of any former Law for the same Offence; and no Writs of *Certiorari* shall supersede, or remove any Proceedings by Virtue of this Act.

Water Measure.

And by 1 *Ann. cap. 15.* Water Measure shall be round 18 Inches and a half Diameter within the Hoop, and 8 Inches deep, and no more, and so in Proportion for any greater or lesser Measure, and the Measure by which Apples and Pears are sold shall be heaped as usually. And whosoever shall buy or sell with any other Measure, shall forfeit 10*s.* half to the Informer, and half to the Poor of the Parish, being thereof convicted by the Oath of one Witness, before any Justice of Peace, Mayor or Head Officer of the County, City, or Town

Corpor-

Corporate, where the Offence is committed to be levied by Distress.

Proviso, not to extend to any Measure sealed and allowed by the Company of Fruiterers, *London*, to be used there, and within three Miles of the same City.

Other Matter relating to. Farmers, &c. as to holding of Farms, keeping Sheep, &c.

By 4 H. 7. 16. None shall take more *One Farm.* Farms than one, of any Manors, Lands, Tenements, Parsonages or Tithes, in the Isle of *Wight*, which one shall not exceed ten Marks in yearly Value, on Pain of forfeiting 10 *l.* to the King for every such taking; and this was to avoid Depopulation.

By the Statute of 25 H. 8. 13. None *Two Farms.* shall receive or take in Farm, for Term of Life, Years, or at Will, by Indenture, Copy of Court-Roll, or otherwise, any more Houses or Tenements of Husbandry, whereunto any Lands are belonging, in Town, Village, Hamlet, or Tything within this Realm, above the Number of two such Holds or Tenements; and they are to be situate in the same Parish where he dwells, on Pain to forfeit to the King and Informer 3 *s.* 4 *d.* for every Week he takes the Profits of them.

By the Statute of 21 H. 8. 13. No *Spiritual Person.* Spiritual Person shall take to Farm to *him.* him-

himself (or to any other for his Use) any Lands or other Hereditaments for Life, Years, or at Will, on Pain to forfeit 10*l.* for every Month he so continues the same, to be divided betwixt the King and the Profecutor. But this Act not to extend to any spiritual Person, for taking any Archbishopsricks, Bishopricks, Abbies, Priories, or Collegiate, Cathedral or Conventual Churches, nor to any such Person who shall tender or make any Traverse upon any Office concerning his Freehold.

*No Parsonage
or Vicarage.*

The said Act also provides, That no spiritual Person shall take in Farm any Parsonage or Vicarage, on Pain to forfeit 40*s.* for every Week that he or any other for his Use so occupies the same, and also ten times the Value of the Profit or Rent that he makes thereof; both which Forfeitures are to be divided betwixt the King and the Profecutor. See after.

Sheep.

*Keeping of
Sheep.*

By 3 H. 6. 2. None shall transport Sheep beyond Sea, without the King's Licence, in Pain to forfeit them, or the Value thereof.

Also by 25 H. 8. 13. None shall keep in his own Possession, at any one Time above two thousand Sheep, on Pain

pain to forfeit for every Sheep kept above that number 4 s. 4 d. to be procured for a Subject within one Year, and for the King within three; but here Lambs shall not be accounted as Sheep till Midsummer Twelvemonth after their Fall.

And if any happen to have more Sheep than two Thousand, by reason of an Executorship or Marriage, they shall not be impeached by this Law, so that in one Year after they put off so many, that at the End of the Year they may not have above two thousand: Neither shall a Child, during his Nonage (nor any Person for him) be endamaged by this Act, which Child shall have by Legacy above two thousand Sheep given him.

But every Temporal Subject may keep *Demefus Lands* (upon his own Demefus Lands) as many Sheep as he will, or for the Maintenance of his House, above the Number of two thousand, notwithstanding this Act.

A Thousand of Sheep meant by this Statute, shall be accounted after the rate of six-score to the Hundred.

Justices of Peace have power to hear and determine the Offences committed against this Act; but shall not take a less Fine than is limited by the same. Spiritual Persons, may keep Sheep as they have used to do, notwithstanding this Act.

And by the Statute of 2 & 3 P. & sharp fadent.
M. 3. Whosoever shall feed above 120
shorn

shorn Sheep for the most part of the Year upon his Grounds, which be several and apt for milch Kine and not commonable; and shall not for every fixty Sheep keep one milch Cow; and moreover, for six-score Sheep yearly rear one Calf during the time of keeping such Sheep, shall forfeit to the King and Informer for every Cow not kept, for every Month 20 s. and as much for every Calf not reared. 2 &

3 P. & M. 3.

Beest feeders.

Also whosoever shall feed upon his several Pasture above twenty Oxen, Ronts, Steers, Scrubs, Heifers, Kine, and shall not for every ten Beasts keep one milch Cow, and for every two Kine wean and rear up yearly one Calf (except it die) shall forfeit as before; the Suit to be commenced within one Year after the Offence committed, and not to bind such as keep Sheep or feed Beasts for their own Provision. Justices in their Sessions have Power to hear and determine the Breach of this Statute.

By Stat. 15 Car. 2. c. 8. No Butcher shall sell fat Cattle, Calves, Sheep, or Lambs alive, on Forfeiture of double Value between the King and Prosecutor. See 3 & 4 E. 6. 19.

And by the Statute of 8 Eliz. 3. Whosoever shall bring, send or receive into any Ship or Bottom any Rams, Sheep, or Lambs, being alive,

co

2 & 3. P. & M. 3.

*Exporters of
Sheep and
Wool, 8 Eliz.
3.*

to be conveyed out of the King's Dominions, or procure the same, shall for the first Offence forfeit all his Goods for ever to the King and Informer, and be imprisoned one Year without Bail, and then in some open Market, in the Fulness of the Market on the Market-day, have his left Hand cut off, and the same to be nailed up in the open Place of such Market; and for the second Offence it is made Felony.

There are several Statutes concerning *Husbandry, Tillage, &c.* as 4 H. 7. 19. 7 H. 8. 1. 27 H. 8. 22. 5 Eliz. 2. 14 Eliz. 11. but these seem to be repealed or out of Use, and as such are not taken Notice of in the late Abridgments.

By the Statute of 27 H. 8. 6. Every one having Inheritance or Freehold in a Park kept for Deer, and a Mile about, or his Farmer, shall keep two Mares able and apt to bear Foals, each of them being thirteen Hands high from the lower Part of the Hoof to the highest Part of the Shoulder, and each Hand containing four Inches, on Pain of 40 s. for every Month they want them; and if the Park be four Miles about, they shall keep four such Mares upon the like Pain.

If any of the Mares die, they have three Months given them to provide another, without Danger of incurring the said Penalty.

They

They shall not suffer their Mares to be leapt by any stoned Horse under fourteen Hands high, on Pain of 40*s*. the Forfeitures to be divided betwixt the King and the Prosecutor.

But this Act not to extend to *Westmorland, Cumberland, and Northumberland*, nor the Bishoprick of *Durham*; nor to Parks wherein the Inhabitants of the Town next adjoining have Common.

And spiritual Persons may sell the Increase, and breed their Mares, notwithstanding this Act. *Vide postea*.

Yet by the 2*ist* of *H. 8. 13*. No spiritual Person shall by himself, or any other for his Use, buy to sell again for Profit, any Cattle, Vidual or Merchandize whatsoever, on Pain to forfeit treble the Value thereof, to be divided betwixt the King and the Prosecutor, and every such Bargain shall be void.

Howbeit, that Statute allows him to buy Horses, Mares, or other Goods, for his necessary Use and Employment; and in Case they happen not for his Turn, may sell them again, so as this be done without Fraud or Covin.

Likewise those that have not sufficient Glebe or Demest Lands in Right of their Churches or Houses, may (notwithstanding the Act) for the only Expences of their Houses, and for their

Carriages and Journeys take in Farm other Lands, and buy and sell Corn and Cattle for the only Maintenance and Pasturage of such Farm, so as it be done for such Purposes only, without Fraud and Covin.

By 23 *H. 8. 11.* None shall put to feed upon Forests or common Ground any stoned Horse, being above two Years old, and not 15 Hands high from the lower Part of the Hoof to the upper Part of the Wither, (every Hand containing 4 Inches Standard-Measure) on Pain to forfeit the same Horse.

And it shall be lawful for any Man to seize to his own Use any stoned Horse of lesser Stature, put to feed upon any such common Ground, as aforesaid; so that first by the Assistance of the Keeper of the Ground, or Constable, Bailiff, Headborough, or other such Officer of the Parish adjoining, such Horse be brought to the next Pound, and there, by the Officer, and in the Presence of three other sufficient Men, be measured and found lower than the Statute.

Those that refuse to measure, or to be present at Measuring of such Horse, shall forfeit 40 *s.* a-piece for every such Default, to be divided betwixt the King and the Prosecutor.

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But an Horse that makes an Escape into such a Common shall not be questioned, so that he stay not above four Days after Notice thereof given at the Owner's House, or in his Parish-Church.

Upon the yearly driving of Forests and common Grounds, if any unlikely Fills be found, they shall be kill'd.

Justices of Peace in Sessions have Power to hear and determine these Offences; but Stewards of Leets only to take Presentments of them, which they shall certify at the next General Sessions, or to the *Custos Rotulorum*, on Pain of 40 s.

None shall put upon Common Ground or Common Fields, any scabbed or infected Horse, on Pain to forfeit 10 s. to the Lord of the Leet.

But this Statute shall not restrain keeping of Horses under the Statute upon Commons, where Mares are not usually kept.

Also this Stat. of 23 H. 8. 13. shall not restrain the keeping of stoned Horses of a lower Stature in the Fen-Grounds of the Isle of *Ely*, and of the Counties of *Cambridge, Huntingdon, Northampton, Lincoln, Norfolk or Suffolk*; so that the Horses there kept, be not under 13 Hands high. 8 Eliz. 8.

Neither shall it extend to the County of Cornwall. 2 Fac. 1. 28.

The Statute of 11 H. 7. 13. provides, That none shall convey any Horse out of this Realm without the King's Licence, nor any Mare above the Value of 6*s.* 8*d.* on Pain of Forfeiture, betwixt the King and Seizor, &c. But not to prohibit any to transport without Licence any Horse for his own Use, he making Oath before the Customer or Searcher, that he intends not to sell him, &c.

But the Statute of 1 E. 6. 5. provides, That none shall convey, sell, or deliver any Horse into *Scotland*, or any other foreign Country (without the King's Licence, or for his Service in the Wars) on Pain to forfeit such Horse, and 40*l.* to be divided betwixt the King and the Prosecutor: But Mares under the Value of 10*s.* may be conveyed.

The Wardens of the Marches and Justices of Peace in Sessions have Power to determine these Offences; and it shall be lawful for any of the King's Subjects to arrest or imprison any *Scotch-man*, or other, that shall convey any Horse contrary to this Act.

He that has the King's Licence to convey Horses into *Scotland*, shall, before he so convey him, shew his Licence to one of the Wardens of the Marches (that their Number may be

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kalendred) on Pain to forfeit his Horses, or the double Value of them, to be divided betwixt the King and the Profecutor.

How Farmers and Husbandmen are chargeable towards mending the Highways.

Highways, how to be mended.

Vid. Appendix, p. 43, 44.

If any Person having a Team of Plowland in Tillage or Pasture (which is so much as one Man can plow in a Year) keeping a Draught or Plough, shall not find one Wain or Cart furnished to work eight Hours for six Days, at the Appointment of the Surveyors for mending the Highways, he shall forfeit for every of the said Draughts making Default 10 s. 2 d 3 $\text{P. \& M. 8. 29 Eliz. 5.}$

If such Carriages be not thought needful by the Surveyors to be occupied upon any of the said Days, then the Persons that should have sent Carriages shall send two able Men for Carriage spared to labour for that Day, upon Forfeiture of 12 d. a Man. 2 d 3 $\text{P. \& M. 8. 5 El. 13.}$

Forfeitures.

Note, By the Statute of 22 Car. 2. c. 12. The Forfeitures are settled thus, for every Day-labour neglected 18 d. for every Man and Horse 3 s. and for every Cart with two Men 10 s. for each Day's Neglect. See after.

If

If any Houſholder, Cottager, or Labourer having no Plough or Draught, ſhall not by himſelf or ſome other work eight Hours of the ſaid fix Days in the High-ways, he ſhall forfeit for every Default *12d.* by the ſaid Statutes; and if any Offender ſhall reſuſe obſtinately to pay his Forfeitures twenty Days after lawful Demand, he ſhall forfeit double, 2 *ſ.* 3 *P.* & *M.* 8. 5 *Eliz.* 13.

And by the Statute of 18 *Eliz.* 10. *A Subſidy.*

If a Subſidy-man being aſſeſſed in Subſidy to 5 *l.* in Goods, or 40 *s.* in Lands, ſhall not find two able Men yearly to labour in the High-ways, he ſhall be fined.

He that ſhall occupy a Plough-land in Tillage or Paſture, lying in ſeveral *Land in ſeveral Pariſhes.* Pariſhes, ſhall be chargeable only to the making of the Ways in the Pariſh where he dwelleth. 18 *Eliz.* 10.

But if he occupy ſeveral Plough-lands in ſeveral Pariſhes he ſhall be *Several Plough-lands.* charged within the ſeveral Pariſhes. 18 *Eliz.* 10.

If the Hays, Fences, Dikes, or Hedges next adjoining to any Highway, ſhall not be diked, ſcowerd, repaired, and kept low, and all Trees and *Scowering* Buſhes growing in the ſame cut down, *Ditches, &c.* the Owners ſhall forfeit for every Default 10 *s.* 18 *El.* 10.

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And

And he that scowers not his Ditches in the Ground next adjoining to the Ground, which is next the Highway, to the end the Water may have the better Passage over the said Ground next the Highway, shall forfeit 12 *d.* for every Rod so left unscowered. 18 *El.* 10.

Whosoever shall occupy any Land adjoining to any Highway leading to any Market-Town, and shall cast or lay the Scowering of any Ditch into the Highway, and shall suffer it to lie there by the Space of five Months, to the Annoyance of the Highway, shall forfeit for every Load 12 *d.* 18 *Eliz.* 10.

Where any Soil hath been cast into the Highway, that there is a Bank between the said Highway and the Ditch, the Surveyors may make Sluices to convey the Water into the Ditch. 18 *El.* 10. These Penalties are to go towards mending the Highways.

Likewise the Surveyors may by their Discretion take other Mens Rubbish, Stones and Gravel upon their Grounds for amending the Highways, but must stop the Pits again within one Month after such digging, upon Pain to forfeit to the Owner five Marks. 5 *Eliz.* 13. 29 *Eliz.* 5.

Surveyors may also turn a Water-course being noisom to the Highways into any Man's Ground adjoining,

ing, by Virtue of the said Statutes. But if any Surveyor shall not within one Month, next after any Offence done against the Meaning of these Statutes, present the said Offences to the next Justices of the Peace, he shall forfeit for every Offence not presented 40 s. and the same Justice not certifying it at the next Sessions shall forfeit 5 l. where the Justices shall have Power to inquire of the Fault, and to fine the Delinquents. 5 *Eliz.* 13. 29 E. 5.

By the Statute of 22 *Car.* 2. *cap.* 22. Where the Usage is to carry Materials for Amendment of Highways on Backs of Horses, or by other Carriages, the Inhabitants shall send them in with able Persons to work with them in like Manner, and under the like Penalties as is appointed for Carts and Teams.

And if any fail to make their Day's Labour, or neglect to send their Carriages, &c. the Surveyors may complain to the next Justices of Peace, who upon Oath thereof by one Witness, may levy by Distress and Sale of Goods for every Day Labourer neglecting (without a reasonable Cause) 1 s. 6 d. for every Man and Horse 3 s. and for every Cart with two Men 10 s. which Penalties are to be employed for Repairing the Highways in every respective Place and Parish.

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Surveyors, if they think the Ploughs or Carts needless any of the Days, they may spare them, and instead thereof, require two able Men, who must come upon the Forfeitures aforesaid. 2 & 3 P. & M. 8. And if six Days will not do, the Surveyors may appoint more.

It is said, the Owner of Lands, if he be not the Occupier thereof, ought not to be charged towards the Repair of the common Highways, but that the Tenant who occupies the Lands, is to be charged. 1 *Roll. Cases*, fo. 390.

By 3 & 4 W. & M. cap. 12. No Persons shall lay in any Highway, not twenty Foot broad, any Matter whereby the same may be obstructed or annoyed, on Pain to forfeit 5 s.

If any Timber, Stone, Straw, Hay, or other Matter for making Dung, or on any other Pretence, shall be laid in any such Highway, the Possessors of the Land next adjoining, shall remove and dispose of the same to their own Use; and if they neglect to clear the Way, or to cleanse their Ditches, &c. adjoining thereunto, or to cause the Earth taken thereout to be carried away, and to lay sufficient Trunks or Bridges, where there are Cartways into the said Ground, by the Space of ten Days, after Notice given by any of the Surveyors, they shall forfeit 5 s. for every such Offence,

Offence, to be levied by Distress and Sale, &c.

Also no Tree, Bush, or Shrub, shall be permitted to grow in any Highway not 20 Foot broad, but shall be cut down by the Owner of the Land where it stands, within ten Days after Notice given by any of the Surveyors, on Pain to forfeit 5 s. to be levied and disposed as aforesaid, viz. one Moiety to the Informer, and the other to go towards the Repairing the Highways. A Surveyor neglecting his Duty, forfeits 40 s. to be levied and disposed as aforesaid; a Justice neglecting or refusing to act his Part forfeits 5 l. one Moiety to the Prosecutor, the other to be employed for the amending of the Highways where the Person who sues shall inhabit, to be recover'd in any of their Majesties Courts by Action of Debt, &c.

Surveyors, where the Ditches and Drains are not sufficient to carry off the Water, may make new ones through the Lands adjoining, and keep them open, and come upon the Grounds with Workmen for so doing.

And by the Statute of 8 & 9 W. 3. cap. 16. Justices have Power to enlarge the Highways, and take in Ground not to exceed eight Yards in Breadth, but not to pull down any House, nor to take away any Ground from

from Garden, Orchard, Court or Yard.

They are to make Satisfaction to the Owners (not exceeding 25 Years Purchase) and thereupon the Interest shall be divested out of the Owner, and the said Ground shall be esteemed a publick Highway to all Intents whatsoever.

And the Justices may order Assessments to be made and levied upon all such Persons that ought to repair the said Highways towards purchasing Lands to enlarge the said Highways and making Ditches and Fences; the Rates not to exceed 6*d.* in the Pound for Lands, nor for personal Estate in one Year.

The Owner has Liberty in 8 Months after Notice, to cut down any Wood or Timber growing, or upon Neglect the Justices may sell it, and deliver the Owner the Value.

Persons aggrieved, may appeal to the Judges of Assize at the next Assize only, who may affirm or reverse the same; and if they see Cause to affirm, to award Costs against the Appellant.

By 7 & 8 *W.* 3. *cap.* 29. Any Person having in his Possession any Woodland, or other Land of 50*l.* *per Annum* Value, shall be deemed to have a Plowland to all or any the Purposes within any Statute concerning the Highways.

Also

Also every Person who shall pull up, cut down, or remove any Post, Block, great Stone, Bank of Earth, or other Security set up or made for securing Horse-Cawseys or Foot-Cawseys, from Waggon, Wains or Carts, shall (upon Complaint to a Justice of Peace by the Oath of one Witness) forfeit 20*s*. one Moiety to the Surveyors, to be employed in the Repairs of the Highways, the other to him that shall discover the same; to be levied by Distress.

There are several other Statutes relating to Bridges and Highways, which are left to the Discretion of the Justices of Peace and Surveyors.

See more of *Highways* in the Appendix, p. 43, 44.

And *note*, That if any Person shall water any Hemp in any River, running Water, Stream, Brook, or common Pond, where Beasts be used to be watered (but only upon the Ground, in Pits ordained for that Purpose, or in their own several Ponds) he forfeits 20*s*. to be divided betwixt the King and Party grieved, or other Prosecutor. Stat. 33 H. 8. 17.

*Watering
Hemp in a Ri-
ver.*

T H E

THE

T A B L E.

CHAP. I. Concerning Contracts, Promises and Agreements, and of Actions to be brought thereupon.

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The Action intended in this Treatise is a Personal Action, arising from Contracts, Bargains, Sales and Agreements concerning Chattels, &c.

Contract defined, and the several Divisions thereof, viz. Real, Personal, Express, Implied, Absolute and Conditional, in Writing or by Word of Mouth, executed presently or executory; i. e. to be executed at a Time to come,

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F I N I S.

AN

APPENDIX

TO THE

Tradesman's Lawyer, &c.

Correcting and Illustrating many Cases therein: And shewing in divers Particulars how far the Law (since the *Second Edition* of that Treatise) has been alter'd or explain'd both by *adjudged Cases* and *Acts of Parliament*.

HAVING lately perus'd the Treatise entitled, *The Gentleman's Assistant, Tradesman's Lawyer, &c.* (a Work very useful in its Kind, and well answering the Title it bears) I could not but observe, That in divers Particulars thereof, the Law has been since alter'd or explain'd both by modern adjudg'd Cases, and subsequent Acts of Parliament: And therefore thought it *Design* might be necessary to collect such Cases and Statutes as relate to several Branches
of

APPENDIX.

of that Treatise under the Title of an *Appendix*, &c. And which, being added thereto, will the better explain and illustrate the same.

And to render this present Treatise the more useful to the Reader, I shall here-
in distribute such Modern Cases and Acts of Parliament as relate to the subject Matter of that Treatise, in the same Method and Order as that Book is distributed. And accordingly note in the Margin hereof the several Pages or Chapters thereof to which this Treatise refers. And seeing the first five or six Chapters of that Book treat of *Contracts* on Bargains and Sales in general, I shall first take Notice of some modern adjudged Cases, which may the better explain the Nature of such *Contracts*.

In *Easter* Term in the Third Year of the late Queen *Anne*, at the Sittings at *Guildhall, London*, before *Holt* Chief Justice: The Case as it is put in 6 *Mod.* 162, was thus; The Defendant being Administrator to *Tyler* her late Husband, in his Life-time used to deal in Tea, and accordingly sold four Tubbs of Tea to the Plaintiff at so much per Pound, who took one Tub away, paying the Price agreed for it, and Fifty Shillings over to go towards Part of Payment for the rest. But afterwards the Vendor would not stand to her Agreement. And upon an Action brought, wherein were two Counts, (viz.

And Method of
this Treatise.

Note.

Langford
vers. the Ad-
ministrator of
Tyler.



APPENDIX.

3

(viz. one upon the Agreement, and the other an *Indebitatus* for the 50 s. received to the Plaintiff's Use) four Points were ruled by *Holt* Chief Justice, viz.

1. If the Husband and Wife cohabit, and the Wife deals separately, her Contracts shall charge the Husband. For Cohabitation is a sufficient Evidence of Notice of the Contract.
2. If on a Bargain made, Earnest is given, but no certain Time appointed when the rest of the Money is to be paid, it must be paid on fetching away the Goods, and before they are deliver'd.
3. And in that Case, a Demand of the Goods without a Tender of the Money is void, because not pursuant to the Intent of the Bargain, and the Earnest is given only to bind the Bargain.
4. Also after Earnest is given (and accepted) the Vendor cannot sell to another. But if the Vendee does not come to pay and take the Goods, the Vendor ought to *request* him to come and pay, &c. And if he does not come and pay, and take away the Goods in convenient Time, the Agreement is dissolved, and the Vendor is at Liberty to sell them to any other.

Request; vid. Lib. 100, 101. & post.

Note, The same Case (with small Difference as to the Points held) is

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likewise

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likewise in 1 *Salk.* 113. But there being a gross Error as to the Stating the Case in that Book, I have chosen to follow the other Authority.

Note also, The second and third Points may serve to illustrate what is said in *Chap.* 2d and 3d, and the last Point may be refer'd to *Chap.* 13 of the said *Treatise*; and the first Point may be added to these that follow, *viz.* 'Twas held in the before-mention'd Case, by *Holt* Chief Justice, That the Husband shall be liable to the Wife's Contract as a separate Trader, because they cohabited together. *Vide Lib. 1. Chap. 4. 1 Salk. 113, 118.*

Husband and Wife, p. 16.

Vid. p. 16.

But *note*, The Wife's Contract, notwithstanding Cohabitation, shall in no Case bind the Husband unless there be a presum'd Assent, but not where he expressly dissents beforehand: As was ruled by *Holt* Chief Justice, at a Tryal at *Guild-Hall* in *Easter* Term in the Second Year of the late Queen, *viz.* In an Action on the Case for Goods sold and deliver'd, the Evidence was, That the Defendant's Wife bought Goods of the Plaintiff to make her Cloaths, and that she and her Husband cohabited. On the other Side 'twas prov'd she was very extravagant, and us'd to pawn her Cloaths for Money, to get Drink, &c. That she had pawned one Suit that cost 7*l.* for 20*s.* and being redeem'd by her Husband, she pawn'd

Etherington v. Parrot, 1 Salk. 118.

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pawn'd 'em again for less; that she needed no Cloaths when she bought these; and that the Defendant, the last Time he paid the Plaintiff, warned the Plaintiff's Servant not to trust her any more, and to give his Master Notice of it: And thereupon 'twas ruled,

1. That while a Husband and Wife cohabit, he shall answer all her Contracts for Necessaries; for his Assent shall be presumed to all necessary Contracts, by Reason of their Cohabiting, unless the contrary appear.

2. But if the contrary does appear, (as by the Warning, &c. in that Case it did) there is no Room for such a Presumption, and there was no Necessity to trust her; for in this Case she needed 'em not, and *Warning to Vid. Lib. 105, the Servant was sufficient. 106.*

3. And by *Holt* Chief Justice, If a Woman takes up Goods, as Silks, &c. to make Cloaths, and pawns 'em before they are made up, the Husband shall not pay for 'em, because they never came to his Use; other-*wise, if made up and worn, and then pawned by her. Parnu, vid. post 9. & other-Lib. ch. 15.*

And *Note*, In the last mention'd Case, two other Points were also ruled, *viz.*

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1. If

*The Husband
liable or not.*

1. If a Husband turns away his Wife, he gives her Credit for Neecessaries where-ever she goes, and must pay all her Contracts for such Neecessaries.
2. But if she runs away from her Husband, he shall not be bound by any Contract she makes. *Vide infra.*

Robinson
ver. Greinold, at a Tryal at *Guild-hall* in *Easter Term*,
1 *Salk.* 119. in the Third of the late Queen, That

1. Tho' a Wife be never so lewd, yet while she cohabits with her Husband, he is bound to find her Neecessaries, and to pay for 'em; for he took her for better for worse; and so it is if he turns her away, or runs away from her.
2. But if she goes away from him, when such Separation becomes notorious, whoever gives her Credit, does it at his Peril; and in that Case the Husband is not liable even for Neecessaries, unless he take her again; for it is as if a Woman had eloped at Common Law, she there-by lost her Dower; but if she came again, and the Husband receiv'd her, the Right of Dower is revived.

Todd *vers.* And it was also ruled by the same
Streakes, 1 *Salk.* Chief Justice at a Tryal at *Guildhall*,
116. *Mich.* 8. *W.* 3. That after a notorious
Separation

Separation, tho' voluntarily and by Consent, she cannot charge her Husband, if a separate Maintenance be allow'd her. Where the Case was, That the Plaintiff was an Apothecary, and serv'd the Defendant's Wife with Physick, who, by Agreement lived separate from him, and had an Allowance of *Separate Maintenance* 20 *l. per Annum*. And by *Holt*, She having a separate Allowance, 'twould be very unreasonable she should have it still in her Power to charge him; and it is not to be presumed but that such Tradesmen as deal with her, trust her upon her own Credit, and not the Credit of her Husband; and Personal Notice of the Separation is not necessary where it is publick and commonly known.

And consonant to this Opinion of *Holt* Ch. Just. was that of *Trevor* Ch. Just. of the *Common-Pleas*, at a Tryal before him in *Easter* Term, 3 *Annæ*, where the Case was thus; A Feme Covert had parted from her Husband by Consent, who allow'd her a separate Maintenance: She came from *B. in Yorkshire* up to *London*, where living in Adultery, some four Years after became big with Child, and in that Condition came to lodge with the Plaintiff, who did not appear to have known any Thing of the Matter, and lodg'd and boarded with him for near a Twelvemonth, and he was also at

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the

Cragg. v. f.
Bowman. 6
Mod. 147.

Husband liable or not. the Charge of her Lying in; And an Action being brought against the Husband for this Debt, the Chief Justice order'd the Plaintiff to be called; for, he said, tho' the Husband be bound to pay the Wife's Debts for her reasonable Provision, (while she cohabits,) yet if she parts from him, especially by Reason of her Misbehaviour, as here it must be presumed by her living in Adultery after the Separation, and he allows her a Maintenance, he shall never after be charged with her Debts till a new Cohabitation.

That a Wife may justify an Assault in Defence of her Husband. *Vide 6, Mod. 147. post 12.*

Master and Servant: Vid. Lib. pag. 16, 17, &c.

These Cases may be sufficient to illustrate how far the Husband shall be bound or not bound by his Wife's Contract. I shall next produce some Modern Cases to shew how far the Master shall be liable for the Act or Contract of his Servant.

'Tis a Rule in Law, That he who employs another as his Servant or Agent, undertakes for him, *viz.* That he shall do the Act without Prejudice. And therefore if the Servants of *A.* with his Cart run against another Cart wherein is a Pipe of Sack, and overturn the Cart, whereby the Sack is lost or spoiled, an Action lies against *A.* for this Damage. So where a Carter's Servant ran his Cart over a Boy, 'twas held

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held the Boy should have his Action *Master liable,* against the Master for the Damage received by this *Negligence* of the Servant.

So at a Trial at *Guild-hall, Mich. 10*

W. 3. by *Holt*, Chief Justice, Where a Pawn broker's Servant took in a Pawn, *Jones versus Hart.* the Pawner afterwards came and re-

ceived the Money to the Servant, who ^{*Pawn.*} telling him he had lost the Goods, he ^{*Vide Libch. 19.*} brings Trover against the Master, and ^{*p. 127. &c.*} it well lay. 2 *Salk.* 441.

But *Note*, 'Tis said the Master is liable only for the Negligence of the Servant, but not for his willful Wrong; and for this Purpose is the Case of *Negligence.*

Lane and *Cotton* there cited, *viz.* A Letter, with Bills in it, were delivered at the Post Office to a Servant, and afterwards lost; 'twas held an Action lay against the Post-Master, and not against the Servant unless he stole them, for then he were a Wrong-doer; as where a Gaoler suffers an Escape willfully, there he himself is liable, otherwise if negligently, for then the Sheriff must answer. *Per Holt*, Chief Justice.

Also, a Master of a Stage-Coach is liable for Goods lost or spoiled by his Driver, if he has a Price for their Carriage; otherwise not. 1 *Salk.* 282.

So if Goods are spoiled by the Default or Negligence of the Master of a Ship who is employ'd by the Owners thereof, an Action will lie against the Owners; for he that employs a Servant

Master liable, vant undertakes for him, *Vide* the Case of *Boson* vers. *Sanford*. *Sbqv.* 29. 3 *Lev.*

Vid. Lib. chap. 258. 3 *Mod.* 321. 2 *Salk.* 440.

17.

So before the Stat. 6 *Anne* cap. 31. If a Fire by Negligence of a Lodger or Servant had burnt the Master's House, and also any of the Houses near there, to, or done any other Damage, the Master himself was liable to an Action occasioned by the Negligence of the Servant. *Vide* the Stat.

Note.

But *Note*, The Act of the Servant *Vide* 6 *Mod.* 36. binds not the Master, unless he acts by 2 *Salk.* 442.

Authority of the Master or he afterwards consents, &c. As in the Case of *Ward* vers. *Evans*, *Mich.* and *Hill.* 2 *Anne* in the Queen's Bench, viz. *Ward* sent his Servant to receive a Note of 50 l. of B. who went with him to Sir *Stephen Evans*'s Shop, who endors'd off 50 l. from a Note B. had upon him, and gave *Ward*'s Servant a Note of 50 l. upon one *Wallis* a Goldsmith, to whom it was carried the next Day by *Ward*'s Servant; *Wallis* refused Payment, and the same Day broke, upon which the Note was sent back to Sir *Stephen Evans*, who also refus'd Payment, and thereupon the Action was brought, and it was held by the Court, That the Act of the Servant shall not bind the Master, he not acting pursuant to the Authority given him by his Master.

A Goldsmith's Note.

And

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II

And therefore, If the Master sends ^{Master liable} his Servant to receive Money, and the ^{or not.} Servant instead of Money takes a Bill, and the Master as soon as he is told thereof disagrees, he is not bound by his Servant's Receipt of such Bill, for he was directed to receive Money, and not a Bill. But Acquiescence or any small Matter, will be a Proof of the Master's Consent, and will make the Act of the Servant the Act of the Master.

The precedent Case was of a Gold-^{Bill of Ex-}smith's Note; Now as to Bills of Exchange we are further to observe, That no Person, be it Wife or Servant, can accept of a Bill of Exchange or receive Money due thereon, without a lawful Authority, as a Letter of Attorney, &c. and that too under Hand; except such Acceptance or Receipt has been formerly and usually done by such Wife or Servant. But one Partner may accept, receive, pay, &c. for another.

A remarkable Case touching this ^{Mall. Lib. 2.} Matter was in *Michaelsmas Term*, 22 *Car. cap. 10. §. 17.* 2. in *B. R.* A Servant of Sir *Robert Clayton* and Mr. Alderman *Morris* (but at that Time actually gone from them) took up 200 Guineas of Mr. *Monk* a Goldsmith, without any Authority of his Masters (but *Monk* did not know that he was gone from them) and the Money's not being paid, *Monk* brought an Action against Sir *Robert Clayton* and *Morris*,

Master liable,
&c.

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Morris, and 'twas ruled by *Kelynge Ch. Just.* That they should answer, and a Verdict was for the Plaintiff, and tho' great Endeavours were used for a new Tryal, it was deny'd, the Court being fully satisfied, That they ought to pay the Money; for this Servant had often used to receive and pay Moneys for them, and thereupon they actually paid the Money to Mr. *Monk*.

That an Action lies for or against the Master on a Promise made by or to the Servant. *Vide Lib. p 71, 72.*

If a Servant be robb'd of his Master's Money or Goods, either the Servant or the Master may sue the Hundred. 2 *Salk.* 613, 614.

Servant justifies in Defence of his Master.

Note, A Servant may justify a Battery in Defence of his Master; but the Master cannot justify in Defence of his Servant. Also a Wife may justify in Defence of her Husband, and so may a Husband in Defence of his Wife.

See for this the Case of *Leward* vers.

Basilee, Mich. 7 W. 3. in B. R. 1 Salk. 407.

In Trespass by Husband and Wife for an Assault on the Wife, the Defendant pleaded *Son Assault Demesne* of the Wife; the Wife Plaintiff, replied, That the Defendant was going to wound her Husband, and that she *insultum fecit* on the Defendant, to defend her Husband; to this the Defendant demurr'd, and it was urged for the Defendant, That *Insultum fecit* was naught; and to prove it

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it so, a Case was cited, *Trin 21 Car. 2. Master Little, Rot. 1821.* where the Defendant pleaded &c. *Insultum fecit*, in Defence of his Possession, which was held ill, and that he should have pleaded *Molliter manus imposit.* *Quod fuit concessum per Car.* But the Court said this Case differed from that; for a Wife may justify an Assault in Defence of her Husband, and so may ^{But a Man} a Servant in Defence of his Master; ^{cannot in De-} but a Master cannot in Defence of his ^{Servant, or} ~~servant~~ of his ^{of his} ~~household~~ ^{of his} ~~household~~. (*Q.*) And that if the Defendant was holding up his Hand to strike the Husband the Wife might well make an Assault on him to prevent the Blow. But a Man cannot justify an Assault in Defence of his (Servant) *House* or *Closet*, but must plead *Molliter manus imposit*; and Judgment was for the Plaintiff.

But see *Nelson's Lutw.* 287, 476. some Books seem *contra*. And in *Owen's Reports*, 94. a Case is cited, where a Man justified a Battery in Defence of his Dog; and in the same Book, p. 150. it is reported as the Opinion of my Lord *Coke*, That a Man may use Force, that is, he may justify an Assault and Battery too in Defence of his Goods, but cannot justify any Wounding or Maiming in that Case. And *Note*, in Defence of a Man's own House it has been often held, he may justify both a Bat-

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Battery and Wounding, &c. viz. where it is illegally attempted to be broken or entred.

Note, If *A.* and *B.* come to a Shop to buy Goods, and *A.* says to the Seller, *Let B. have such and such Goods, and I will see you paid, &c.* The Law intends *A.* to be the Buyer, and *B.* to act as *A.*'s Servant; *contra*; where he says, *If he does not pay you, I will, &c.* for that is only a collateral Undertaking, and void by the Stat. of Frauds, except in Writing, &c. 1 *Salk.* 28. *Vide post.*

For the better Illustration of the several Particulars in Chap. 9. of the said Treatise, touching Contracts, Promises, Bargains and Sales, &c. may be here added thereto the several Rules and Cases following, viz.

An *Assumpsit* lies on a Promise to pay so much new Money in Consideration of so many Pieces received of old Money, tho' 'twas objected, That the Property was not altered, being to receive it again in Specie, but the Court held *contra*. For a Delivery in Consideration of being paid the Value, is a Sale. *Trin.* 1 *Anne* in *B. R. Herbert* vers. *Borstow.* 1 *Salk.* 25. *Vide N. Lutw.* 148.

Assumpsit lies on a Promise to pay 5*l.* in Consideration of a Note of 5*l.* under a Third Person's Hand, delivered up by the Plaintiff to the Defendant. For the Note being Evidence of the Debt, the

Contracts, &c.
Vide Lib.
Page 43, 44.

Bargains and
Sales.

the parting with it is a good Consideration. *What a good Consideration.* *Palch.* 1 *Anne* in *B. R. Meredith's Consideration.* *vers. Short.* 1 *Salk.* 25. But *Note* 3 *Cro.* 155, 170. *Pal.* 171. and 2 *Saund.* 136. *seem contra.* See the next Case.

In *Assumpsit* the Plaintiff declared, That he was possessed of a Note of the Defendant's, by which the Defendant promised to pay him so much Money, and that he (in Consideration the Plaintiff would deliver him the said *Note* *Vide Lib.* 43, *Note*) promised to pay him the Money, 49, 97, &c. and that thereupon he delivered him the Note. And after a Verdict for the Plaintiff, 'twas moved in Arrest, That here was no Consideration; for it did not appear what the Consideration of the Note was, and if the Note were without Consideration, the Delivery of it up cannot be one. *Vide Pal.* 171. 2 *Saund.* 136. But the Court held, That a Note for Payment of Money does not carry a Consideration in itself, yet it is Evidence of a Debt, and by consequence a Means whereby he may recover his Money, and the parting with it is a Consideration, and the Defendant has admitted it to be upon Consideration, by demanding it to be delivered. Also, If the Case had been that this had been the Note of *J. S.* for Payment of Money to *J. N.* and *J. D.* (a Stranger) in Consideration that *J. N.* would deliver the Note to him, had promised to pay him, this had

Consideration, had been a good Consideration; for it is not necessary the Matter of the Consideration should be of Advantage to the Defendant, so it be any Trouble or Disadvantage to the Plaintiff. *Pasch. 1 Annae, Sir George Tuke's Case. Farewell, 12, 13.*

So an *Assumpsit* was in Consideration, That the Plaintiff would accept the Defendant instead of *A.* with an Averment, That he did accept him to be his Debtor; adjudged good after Verdict, tho' no express Averment that *A.* was discharged. *Pasch. 9 W. 3. Roe vel. Haughb. 1 Salk. 29.*

So an *Assumpsit* was against a Stranger on his Promise to pay the Debt in Consideration an Officer would restore Goods taken on a *Fieri Facias*; and held a good Consideration. *1 Salk. 28.*

But where Money is paid knowingly upon an illegal Consideration, as by an Obligor upon an Usurious Bond, or for Money delivered to a Solicitor to bribe Custom-house-Officers, &c. and laid out accordingly, no *Assumpsit* lies. *1 Salk. 22.*

Mutual Promises on Marriage-Contracts.

Assumpsit where in Consideration the Plaintiff promised to marry the Defendant, she promised to marry him; in this Case it lies for the Man as well as the Woman, because their Promises are mutual. But if the Promise be only on one Side, or if that on the other Side is not binding, the whole is but

nudum pactum; for it must be binding on both Sides, or it is binding on neither. *Mich. 10 W. 3. Harrison vers. Cage. 1 Salk. 24. 5 Mod. 411, 412.*

But see the Case of *Hutton vers. Mansel. Pasch. 3 Anne, B. R. 6 Mod. 172.* Mutual Promises of Marriage were laid, and a Breach alledg'd against the Man, and upon the Evidence an Express Promise was proved upon the Man, but none on the Woman's Side; and by *Holt, Ch. Just.* If there be an Express Promise by the Man, and it appears the Woman countenanced it, and by her Actions behaved her self so as if she agreed thereto, tho' there be no actual Promise made by her, yet that shall be sufficient Evidence of a Promise on her Side; and cited a Case as so ruled by Chief Baron *Montague.* But *Quere,*

Where one Thing is to be the Consideration of the other, tho' there be Mutual Promises yet the Performance must be averr'd: As if I sell you my Horse upon your paying me 10*l.* I cannot have an Action for the Money without a Delivery or a Tender of the Horse; nor can you have an Action for my Horse without averring Payment or a Tender and Refusal of the Money. And so it is where mutual Promises are to transfer Stock, &c. on Payment of so much Money, &c. But if a Time be limited for the Performance

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ance on either Part, there it is otherwise. See 1 *Salk.* 112, 113, 171, 172.

Note the Case of *Hoffer* vers. *Wallis*, *Hill.* 6 *Annae B. R.* 1 *Salk.* 28. where a Man, living his former Wife, married *B.* and received the Rents of her Lands, &c. and 'twas adjudg'd, That an *Indebitatus Assumpsit* well lay against him by *B.* as for so much Money had and received by him to her Use.

Note also, An *Indebitatus Assumpsit* lies in no Case but where Debt lies; for therein the Sum demanded must be reduced to a Certainty. 1 *Salk.* 23. But in all Cases where another receives Money to my Use, an *Indebitatus Assumpsit* lies. Also, where another receives my Money by Wrong or Deceit, the Law says it was receiv'd to my Use, and an *Indebitatus Assumpsit* lies, as in the Case *Supra.* Vide 1 *Salk.* 23, 24, 27, 28.

And where one pays Money by Mistake on an Account, &c. or by any meer Deceit, he may have this Action. So it lies for one that pays Money on a Policy of Insurance, believing the Ship to be lost when it is not. *Ibid.* 22.

It lies by an Executor against one that receives Money by order of an Administrator; *i. e.* after the Administration is repealed. *Ibid.* 27.

An *Indebitatus Assumpsit* will not lie against *B.* for Money lent to *A.* at *B.*'s Request, (except in Writing, &c.) because

cause the Promise was only collateral. But it seems a Special *Assumpsit* may lie in that Case.

See the Case of *Butcher* vers. *Andrews*.

1. *Salk.* 23, where an *Assumpsit* was, For that the Defendant in Consideration that the Plaintiff, at his Request, would lend the Defendant's Son any Sum of Money, and let him have any Goods, so as such Money and Goods exceeded not 5 *l.* promised to pay him, and avers, That he lent him 5 *l.* in Money, and let him have Goods upon Credit to the Value of 5 *l.* and also declares, That the Defendant was indebted to him for so much Money *inter duo das' & accommodat'*, to the Son at the Defendant's Request, &c. And upon *Non Assumpsit*, Verdict was *pro Quer'*, and 3 *l.* given in Damages. And upon Motion in Arrest 'twas allow'd, That the Defendant could not be indebted for more then 5 *l.* for he engaged for no more; so that if the Jury had given more it had been naught; but here the Jury having given less than 5 *l.* this was urged to have help'd the Declaration; *sed non allocatur*. For *First*, *Non constat* to the Court, but the Defendant has paid 5 *l.* already, and that this is now claimed over and above. And *Secondly*, The Declaration was naught; for the Money being lent to J. S. (i. e. to a Third Person) The Defendant could not be obliged as for a Debt, or
liable

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liable to an Indebitatus, and was only liable to an Special Assumpsit, as being but collaterally bound by his Promise; for the same Money cannot be lent to Two. But otherwise, if the Money had been only delivered to the Son at the Father's Request, or only had and received by the Son at the Father's Request; for then the Loan had been to the Father. *Quod Nota.*

Touching the Statute of Limitations mentioned in the said Treatise, These further Rules and Cases, are to be observed, viz;

Page 83, 84,
&c.

1. Twenty Years Possession is a good Title in Ejectment for the Plaintiff as well as for the Defendant. See for this the Case of *Stokes* vers. *Berry.* 2 *Salk.* 421.; where another Case is also cited, as so ruled by *Holt*, Chief Justice.
2. Pleas of the Statute of Limitations are to be favoured. This Rule is laid down in the Case of *Green* vers. *Rivet.* *Pesch.* 1 *Anne* in B. R. 2 *Salk.* 421, 422.
3. So in Imprisonment, That Stat. being pleaded to Part, the Plaintiff must reply, That it was one continual Dureffs. See the Case of *Covenry* vers. *Apsey.* 2 *Salk.* 420.
4. And in a Replication, to avoid that Statute the Continuances must be shewn.

shewn. See the Case of *Budd* vers. *Birkenhead*. 2 *Salk*. 420.

5. In an Action removed by *Habeas Corpus*, and that Statute pleaded above, the Plaintiff may reply, That the Suit below was within six Years. *Mathews* vers. *Philips*. 2 *Salk* 424.

6. Also a Writ, as a *Latitat*, &c. sued out within the Time, tho' not declared upon or otherwise proceeded in till after the Time elaps'd, saves the Right of Action by that Statute.

7. Where the Defendant is beyond Sea, it does not avoid the Statute; for in that Case the Plaintiff may either file his Original, or outlaw him. *Hall* vers. *Wyborn*. 2 *Salk*. 420.

8. And the Statute provides only in this Case where the Plaintiff, (and not the Defendant) is beyond Sea *Vide Ibid.* 3 *Lev*. 134. 1 *Lutw.* 947, 950. 1 *Sid.* 228, 702. 3 *Mod.* 311. *Nell. Lutw.* 300.

9. Not Guilty within six Years, is ill in Trespass; for the Action is limited to four Years. 2 *Salk*. 423, 424. 6 *Mod.* 240.

10. Where the Duty arises on a Consideration executory, the Defendant must plead, *Quod actio non accrevit infra sex annos*, and not *Non Assumpsit infra sex annos*. For it is not material when the Promise was made, but when the Cause of Action accrued. *Gould* vers. *Johnson*. 2 *Salk*. 422. *Vide infra*. b. 3 11.

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11. A. receives the Intestate's Money, and afterwards Administration is committed to B.; the Cause of Action accrues by the Administration. See for this the Case of *Cary & ux* *vers. Stevenson*. 2 *Salk.* 421. *viz.*

H. was indebted to A. who dyed, B. receiv'd the Money, and afterwards the Plaintiff's Wife took out Letters of Administration to A. and within six Years after, (but not within six Years of the Receipt of the Money) brought an *Indebitatus Assumpsit* against B. as for Money had and received to the Use of himself and his Wife. The Defendant pleads *Non Assumpsit infra sex annos*, and the Plaintiff replied the Special Matter; and upon Demurrer the Court in *Easter* Term, 6 *W. & M.* held, That the Statute could be no Bar, because the Plaintiff's Title commenced by taking out Letters of Administration, and that this was not a Cause of Action in the Intestate; but thought it would be hard to maintain this as Money received to the Plaintiff's Use, when at the Time of the Receipt he was not Administrator. (2.) And there being other Faults in the Replication, the Plaintiff was advised to bring a new Action, and so the Matter went off.

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The Case of Gould *vers.* Johnson *supra*, was thus; An *Assumpsit* was laid, That in Consideration the Plaintiff, at the Defendant's Request, would receive A. and B. into his House *ut Hospites*, and diet them; the Defendant promised, &c. *Non Assumpsit infra sex annos* was pleaded, and on Demurrer thereto, 'twas held no Plea; and that he should have pleaded, *Actio non accrevit*, &c. and not *Non Assumpsit*, &c. For 'tis not material when the Promise was made, if the Cause of Action be within the six Years, and the Dieting, which is the Cause, might be long after the Promise: And tho' it appears upon the Face of the Declaration, That the Cause of Action did not arise within six Years, yet the Defendant shall not take Advantage of that without pleading; for there might be an Original sued out, which the Plaintiff cannot otherwise shew than by way of Replication, upon the Defendant's putting him upon it.

See also the Case of Dean and Crane, Mich. 3. *Annae B. R.* 1 Salk. 28. and 6 Mod. 139. A Note had been made for Payment of Money by the Defendant to the Plaintiff's Testator, above six Years before the Action brought, and on *Non Assumpsit infra sex annos* pleaded, &c. at the Trial before Holt, Chief Justice, the Plaintiff gave in Evidence a Promise made to himself after the Arrest,

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Arrest, and before the Bill exhibited; and if this Evidence maintained the Declaration was the Question. And the Case of *Heyling and Hastings* was admitted, That a Promise after, or within six Years, brings the Matter out of the Statute, and that owning of a Debt does not go so far, but is Evidence of a Promise. But in this Case, The Declaration being of a Promise to the Testator, the Evidence of a Promise to the Executor will not support it; and the Executor might have declared of a Promise to himself.

And Note, The Case of *Heyling* vers. *Huskins*. Hill. 10 *Annæ*, B. R. 1 *Salk.* 29. In an *Indebitatus Assumpsit*, the Defendant pleads, *Non Assumpsit infra sex annos*. Evidence was, That the Goods were sold above six Years before, and that the Defendant being requested to pay, denied he bought the Goods, but further said, *Prove it, and I will pay you*. And the Court held, That this Promise, tho' only conditional, shall bring back the Debt within the Statute; for the Defendant thereby waives the Benefit of the Act, as much as by an express Promise.

And to the Case in the Treatise, p. 88. on a Promise to pay for a Horse a Barley-Corn *per Nail*, may be added the Case of *Thornborough* vers. *Whitacre*, 6 *Mod* 305. viz. An *Assumpsit* was, That in Consideration of Half a Crown, by the

the Plaintiff in Hand paid to the Defendant, the Defendant promised to pay two Grains of Rye upon *Monday* the 29th of *March*, in such a Year, and four Grains the next *Monday* after, and eight the next *Monday*, and so on (doubling the Number by Progressional Arithmetick) for every *Monday* in the Year. And *Non Assumpsit* being pleaded, The Court upon Motion, said, Let them go Trial; and tho' this would amount to a vast Quantity, yet the Jury will consider of the Folly of the Defendant, and give but reasonable Damages against him.

And here may not improperly be added the following Rules and Cases, touching Notice and Request, &c. viz.

1. Notice is not necessary to be alleged where the Matter is presumed to be known without it; as where *A.* in Consideration that *B.* would deliver up a Bond to *C.* assumes to pay to *B.* 30*l.* An Action lies against *A.* on *B.*'s delivering up the Bond to *C.* without alleging Notice to *A.* of such Delivery, for it shall be intended he had Notice; and the Difference is said to be where the Person to whom the Delivery is to be, is named, and where no such Person is named. See the Case of *Smith* vers. *Goff.* Pasch. 4 *Annæ*, 2 *Salk* 457.

2. No-

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2. Notice is dispensed with where it becomes impossible. But where one is bound by Deed to do an Act, of which he is to give Notice, tho' such Notice is dispensed with by becoming impossible, yet the Act must be done. And this appears by the Case of *Nurse vers. Frampton. Pasch. 6 W. 3. 1 Salk. 214. viz.* In Debt, the Plaintiff declared, That by Deed between him and the Defendant, 'twas agreed, That the Grey Nag of the Defendant's, between the Day of the Date thereof and the last of *August*, a Day's Notice being given to the Plaintiff, should ride from *Hyde-Park* Corner to the first House in *Reading*, in three Hours, for *50l.* betted on each Side, on Forfeiture of *25l.* and avers, That the Defendant gave not a Day's Notice, and that the Nag did not ride: The Defendant craves Oyer of the Deed, which was *Memorandum, It is agreed, That a Grey Nag, &c. In witness whereof we have put our Hands and Seals, (and were not named in the Deed but only by Subscribing it) and pleaded, That the Plaintiff absconded for Felony from such a Day till after the said first of August*, so that he could not give him Notice; And on Demurrer 'twas objected, That the bare setting Hands and Seals did not make them Parties, so as to have an Action. *Vide 2 Inst. 673. 3 Cro. 56. 2. Rol. 22.* But the Court held,

held, *First*, That the Cases were not alike, and that here an Action would lie by the bare Signing and Delivery; and *Secondly*, That the Defendant was not bound to seek the Plaintiff to give Notice, because the Plaintiff, by his own Act in absconding, had prevented it, and a personal Notice was agreed on, which could not be given; and *Thirdly*, That tho' Notice was dispensed with by the Plaintiff's Absconding, &c. yet the Defendant should have rid the Horse within the Time limited; and for Default thereof must pay the Forfeiture. And Judgment was accordingly for the Plaintiff.

Now, as to Demand and Request, where and in what Cases they are necessary to be made, besides what is before observed, we may add the following Cases. *viz*;

In *Trinity Term, 3 Anne in B. R. a Demand and Request.*
 Case was, The Defendant had borrowed Money for the Use of his Mother, and gave a Bond for the Payment of it on all Demands, if his Mother would Turberville.
not pay, and in Debt thereupon, and 6 *Mod.* 100.

Oyer thereof he demurr'd to the Declaration, because no special Demand or Request of the Mother, with Time or Place was laid; and that a *licet sepius Requistus* would not do; for the Defendant owed nothing till a Want (or Refusal) of Payment by the Mother, and no

Request, &c. how to be made.

De-

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Default (or Refusal) could be in her, there being no *Demand*. But the Court held;

1. Where there is a Duty *ab initio*, which the Law makes payable on Demand, there needs no Demand to be expressly laid; and that *here* was a Duty *ab initio*.
2. But where there is no Duty till Demand made, there a Demand must be expressly alledg'd. As,
3. Where one is bound to pay Money on Default of Payment by another, but is not the original Debtor, there he is not liable till a Special Request of him who was to pay it.

See also the Case of *Fitzhugh* vers. *Dennington*, *Mich. 3. Annæ B. R.* where 'tis said by *Mountague* at the Bar, and 6 *Mod.* 227. seems to be agreed by the Bench;

1. When there is a Duty made (or originally created) by the Bond, there needs no Averment of a Request.
2. But otherwise where the Bond is for Doing a collateral Act, as in that Case it was. *Vide 1 Brownl. 13.*
3. But when the Condition is for doing of a Thing, *when thereunto required, or if (thereunto) required*; there the Request is part of the Condition, and is to be specially averr'd.

And

And at another Argument of the *Vid. 6 Mod.*
 same Case, 'twas said by *Holt*, Chief *259. 360.*
 Justice, When a Man is to do a Thing *Time of Request.*
 by or at such a Time, (as at the end of
 7 Years) if *Requested*; there if the Thing
 in its Nature may be done at the Time
 of the *Request*, the Request is to be
 on the last convenient Part of that
 Time; as where a Man is bound to pay
 Money on *Lady-day*, if requested, the
 Request is to be made on the last con-
 venient Time before Sun-set of that
 Day, (so that such a Sum may conve-
 niently be paid before the Day ex-
 pires.)

But *Powell* inclined, That the Rea-
 son of that was, because the Law ap-*Place of Re-*
 points a Place where the Demand of *quest.*
Rent, &c. is to be; but otherwise
 where the Request is to be personal,
 and no Place appointed.

To which *Holt*, Ch. Just. replied, In
 a Bond, where there is no Demand for
 the Payment of Money at such a Day
 and Place, the Obligor must bring the
 Money the last part of the Day to the
 Place; and if there be no Place ap-
 pointed, he must seek him out if he be
 in *England*; but if there be a Place ap-
 pointed, and he has Election to do the
 Thing on or before the Day, there he
 may give the Obligee Notice to be *Notia.*
 there at the Day, and if he don't come,
 and the Obligor is there and renders,
&c. he saves his Bond. As if a
 Man

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Man be bound to enfeof one of Lands in *York*, on the last Day of *November*, and the Covenantee stays here in Town; yet if the Covenantor does not go down to *York*, and tender, &c. he breaks his Covenant.

Time.

Also, There is a Difference when a Time is appointed and when not; for if a Feoffment be to be made at such a Time if *Requested*, there the *Request* is to be made at that Time; but if no Time be fixed, then the *Request* is to be made some reasonable Time before, and the Feoffment need not be made immediately thereupon. And the Case in *1 Rol. Abr. 443.* for Payment of Money in *Holland* on Request, and a Request here in *England* held good, is upon that Difference. *Per Holt.*

And both *Holt* and *Powell* held, That where *A.* was to do a Thing at the end of 7 Years if requested, That the Request was to be made at the last convenient Time of the last Day of the 7 Years. And it is just like a Demand which must be made on such a Time as the Thing may conveniently be done on. *Vide 6 Mod. 260. 2 Salk. 585.*

Where a Request of Departure, &c. is necessary to make one a Trespasser. *Vide 2 Salk. 641.*

Trover, Vide Lib. ch. 14. pa. 114.

As to Actions of *Trover* and *Conversion*, wherof you have some few Cases in the Treatise, the following Rules

Rules and Resolutions of the Court may be added, viz.

1. Trover lies not for a Negro, for Men are the Owners, and cannot be the Subjects of Property. 2 *Salk.* 666, 667.
2. But Trespass *quare Captivum suum cepit* lies, and the Plaintiff may give in Evidence, that he was his Negro. *Ibid.* 667. And there a Difference of Properties in things of a natural and of a civil Existence, and how *Servus prædialis* differs from *Servus personalis*.
3. Trover lies for 14 Lemon-Trees licensed to stand in a Lord's Garden, which was afterwards sold to the Defendant. 6 *Mod.* 170, 171.
4. It lies for 20 Ounces of Cloves and Mace, tho' not shewn how much of each Species, or that they were mixed. 2 *Salk.* 654.
5. So for Plate generally, or for 260 *pecies Argenti*, tho' not shewn of what Kind or Value. 1 *Salk.* 219.
6. It lies *De scripto suo obligatorio*. 2 *Salk.* 654.
7. A Goldsmith having Lottery-Tickets of *A.* and *B.* delivers to *B.* the Tickets of *A.* *A.* may have Trover against *B.* 1 *Salk.* 283.
8. It lies against a Carrier, as for losing a Box, &c. but not for an actual Wrong; as breaking the Box to take out

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out the Goods, or selling it, &c.
2 *Salk.* 655.

N. B. Trespass lies for the Tort and not Trover.

9. One Joinrent or Tenant in Common or Coparcener, cannot bring Trover against his Companion, but may against a Stranger: 1 *Salk.* 290.

10. Any Special Plea in Trover ought to confess a *Conversion*. 2 *Salk.* 654.

Conversion.

Vide Lib, pag.
117.

Note, A *Denial* has been formerly held to be no *Conversion*, but only an Evidence of it. And 2 *Salk.* 655. tis said, A *Denial* is no Evidence of a *Conversion*, if the Thing appears to be lost by Negligence; *Contra*, if it does not so appear, or if it appears that the Defendant had it in his Custody when he denied to deliver it.

But in the Case of *Baldwin* vers. *Cole*, *Trin.* 2 *Annæ*. 'Twas held by *Holt*, Ch. Just. That the very Denial of Goods or a Refusal to deliver them (knowingly) to the Owner, was an *actual Conversion*.

6 *Mod.* 212.

Note, That *Cases* reported in 6 *Mod.* was thus, A Carpenter sent his Servant to work for Hire in the Queen's Yard; who having wrought there some Time, when he would go no more, the Surveyor of the Work would not let him have his Tools, pretending a Usage to detain them, to enforce Workmen to continue till the Queen's Work was

Trover for detaining a Carpenter's Tools on a pretended Usage

was done; and in Trover for them, at *Nisi Prius* a Demand and Refusal was prov'd at one Time, and a Tender and Refusal afterwards.

And per Holt, The very Denial of Goods to him that has a Right to demand them, is an *actual Conversion*, and not only an Evidence of it as has been holden; for what is a *Conversion*, but an assuming to one's self the Property and Right of Disposing another's Goods; and he that takes upon himself to detain another Man's Goods from him without Cause, takes upon himself the Right of disposing of them: So the taking and carrying away (or detaining) another's Goods is a *Conversion*: So if one comes into my Close, and takes and rides my Horse, 'tis a *Conversion*. And supposing the Plaintiff here had receiv'd the Tools upon the *Tender*, yet the *Tender*.

Action would have lain upon the former *Conversion*, and the having of the Goods after would go only in Mitigation of the Damages: And as to the pretended *Usage*, he disallowed it, and compared it to the Doctrine spread among the Army, That if a Man came into the Service, and brought his own Horse, &c. that the Property thereof was immediately altered and vested in the Queen; which Doctrine he had already condemned. Note here, One of the Particulars in the Declaration being ill laid, the Defendant was found

Not guilty to Part.

Not

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Not Guilty as to that ; and Guilty as to the Residue.

There remain some other Cases which might have been reduced under the Heads of *Scandalous Words, Leases and Awards* ; but the *said Treatise* having already so very fully handled these particular Heads in the 18th, 19th, and 20th Chapters, I shall not in *this Appendix* add any Thing thereto, but proceed to Chap. 21. Of *Statute-Laws concerning Tradesmen, &c.*

*A Brief ABSTRACT of the
several Statutes relating to Trade
and Trades-Men, Enacted since the
former Edition of the said Treatise,
or therein omitted.*

THEIR Wares in London to be searched by Physicians chosen by the College; and, if faulty, burnt and destroy'd; and to resist the Search forfeits, *5 l.* by 32 H. 8. c. 20. or 10 *l.* by 1 Mar. c. 9.

If free of the Society in London, or having serv'd seven Years Apprenticeship, &c. they are exempted from serving on Juries, or Constables, or in other Parish-Office, so long as they exercise their Art. 6 W. 3. c. 4. 10 Anne c. 14.

Apothecaries to the Army, &c. to make up their Chests of Medicines at Apothecaries Hall, and to be openly viewed, on Penalty of 40 *l.* 10 Anne c. 14.

Two Justices of Peace, Mayors, &c. Apprentices and Churchwardens, &c. with their Vid. Lib. Consent, to put out poor Boys above ten Years old, Apprentices to Sea-service; and Apprentices may be turn'd over

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over to Sea-service. 2 *Anne* c. 6.
Vid. 10 & 11 *W.* 3. c. 11.

A Duty to the Crown of 6*d.* per Pound for every Pound under 50*l.* given with Apprentices, and 1*s.* per Pound for all Sums exceeding 50*l.* except Moneys given with poor Apprentices. 8 *Ann.* c. 9. *Vid.* 12 *Ann.* c. 7.

Felony to steal Goods, &c. out of any Dwelling-house or Out-house, to the Value of 40*s.* except Apprentices under fifteen. 12 *Ann.* c. 7.

Badgers, &c.

Badgers, Forefallers, &c. *Vid.* Lib. 448, &c.

Bakers, &c.

The Statute 51 *H.* 3. as to the Affize of Bread is repealed; and the Lord Mayor of *London*, and Mayors, or chief Magistrates, or Justices of Peace in other Places, are to set the Affize of Bread by *Averdupois* Weight (having Respect to the Prices of Grain, Meal, or Flower in the Market, and Allowance to the Baker for his Livelihood.) By 8 *Ann.* c. 18. See the Act at large, and that of 1 *Geo.* c. 26. and 5 *Geo.* c. 25.

Note, The Penalty of breaking this Affize, was by that Statute 40*s.* but afterwards by 1 *Geo.* c. 26. 'twas reduced to 5*s.* for every Ounce wanting in Weight, and 2*s.* 6*d.* if less than an Ounce, on Complaint to the Mayor or chief Magistrate in *London* within twenty-four Hours, and in other Places within three Days.

Vid. Lib. 501.

Bakers may make and sell Peck, Half-peck, Quartern, and Half-quartern Loaves,

Loaves, so as they are in Weight and Price according to the said Assize-Taxable. 1 Geo. c. 26.

Every Time the Assize shall be altered, the Prices of Meal and Flower shall be given in on Oath before the Mayor, Magistrate, or Justices *supra*; so that they may set the Assize, and make Allowance to Bakers as formerly, &c. 1 Geo. c. 26.

See the Statute 5 Geo. c. 25. which continues the former.

There having been large Statutes *Bankrupts*. enacted, and particular Tracts written upon this Head, I cannot conveniently abridge the Subject Matter thereof in this *Appendix*, and therefore must refer the Reader to the Statutes of 3 Geo. c. 12. and 5 Geo. c. 24. lately published, with my Observations thereupon.

Starch - Powder made into Hair-*Barbers*. Powder not to have a Mixture of Alabaster, Lime, &c. on Pain of Forfeiture, and the Sum of 50 *l.* and Barbers, &c. selling, &c. such Powder, forfeit 20 *l.* Stat. 10 *Ann.*

Vid. Woodmongers, *post.*

None to buy for Sale, Books brought from beyond Sea, on Penalty of 6 *s.* *Billets. Books and Book-sellers, &c.* 8 *d.* per Book; and unreasonable Prices of Books to be restrain'd by the Lord Chancellor and two Chief Justices. 25 H. 8. c. 15.

All *Popish Books* abolished. 3 & 4 E. 6. c. 10.

Bringing from beyond Sea, or Printing, Buying, or Selling such Books, to forfeit 40 s. a Book.

An Act for Vesting the Copies of Books in the Authors or Purchasers. 8 *Ann.* c. 19.

A Duty laid on Books, Papers, and Pamphlets. 10 *Ann.* c. 19.

That Brads wrought shall pay a Duty of 5 l. per Cent. 4 & 5 *W. & M.* c. 5.

Brassiers. Vid. pag. 438.

Brads, Copper, &c. to be spun on Thread, and not on Silk, on Penalty of 5 s. per Ounce.

And no Thread made of Copper, Brads, or Wire wrought, to be imported, on Pain of Forfeiture. 9 & 10 *W.* 3. c. 39.

That *British* Copper and Brads Wire shall pay no Duty on Exportation. Stat. 7 *Ann.* c. 8.

See the Statutes 1 *Jac.* 1. c. 21. 12 *Car.* 2. c. 13. 6 & 7 *W.* 3. c. 17 8 & 9 *W.* 3. c. 20. & 32. 6 *Ann.* c. 16. 5 *Geo.* c. 24. *Señt.* 28.

Brokers. Vid. pag. 456.

Selling in *London*, or within ten Miles, fat Cattle or Sheep alive or dead, to forfeit the Value. 5 *Ann.* c. 2.

Butchers. Vid. pag. 440, &c.

But this not to extend to Selling Calves, Lambs, or Sheep dead, from one Butcher to another. 7 *Ann.* c. 6.

Making or using, &c. Buttons or Button-holes of Serge, Stuff, &c. incurs the Penalty of 5 l. for every Dozen. 8 *A.* c. 6.

Buttons. Vid. pag. 458.

See the Statute for better Regulation. Vid. pag. 459, ring Hackney Coaches, Carts, Drays, &c.

Carmen, &c.

Carrs, and Waggon, and for preventing Mischiefs occasioned by Drivers riding on such Carts, Drays, Carrs and Waggon. 1 Geo. c. 57.

Vid. Carmen, *supra*, and the Stat 9 A. c. 10 Ann. c. 19. 12 Ann. Sess. 2 cap. 14.

Note, By Stat. 1 Geo. c. 11. Carriers are obliged not to draw with more than five Horses in Length, on Pain of 5*l.* which is agreeable with the Statute 22 Car. 2. being the first Statute made on this Head. But *vid.* Stat. 5 Geo. post Tit. *Higbways*.

Carriers. Vid.
pag. 463. &c.
Coaches.

To mark their Vessels with their own Marks, on Pain of 3*s.* 4*d.* A Beer-Barrel to contain 36 Gallons, a Kilderkin 18, and a Firkin 9; and Ale-Bars 32 Gallons, a Kilderkin 16, and a Firkin 8. Not to inhance Prices, or diminish a Vessel; Pain 3*s.* 4*d.* 23 H. 8. c. 4.

To sell their Vessels at such Rates as shall be appointed by Justices, Mayors, &c. on Pain 3*s.* 4*d.* 8 El. c. 9.

Note, There were two Statutes made one in the 9th, and the other in the 10th of the late Queen, one whereof laid a Duty on Hides, &c. and the other inflicts a Penalty of 50*l.* for removing tann'd Leather before 'tis mark'd by the Officer.

Carriers, &c.
Vid Lib. 479.
482.

Any Person may distill Brandy or Distillers. *Vid.* Spirits from *Briisb* Malt or Cyder, and pag. 487. not be prosecuted on the Stat. 5 Eliz. cap. 4. Sess. 31. 12 Ann. Sess. 2. cap. 3.

Vide

Drapery.

*Vid. Lib. 489, &c. & post Tit. Wool-
len Manufacture.*

Fuel.

Vid. Woodmongers.

*Fire. Vid.
pag. 155.*

Servants who thro' Negligence fire
any House, &c. forfeit 100 *l.* or to be
sent to the House of Correction for
eighteen Months; and no Action to
lie against any Person in whose House,
&c. any Fire accidentally begins, &c.
6 Ann. c. 31.

See the Stat. 7 *Ann. c. 17.* for Pro-
viding and Maintaining Fire-Engines,
and 9 & 10 *W. 3.* against making,
throwing, or firing Squibs, or other
Fire-works.

*Fishery and
Fishermen.*

*Vid. Stat. 10. W. 3. c. 24, 25. 1
Ann. Sess. 1. c. 19. 2 Ann. c. 14. 4
Ann. c. 12 & 21. 5 Ann. c. 7. 9
Ann. c. 16. 1 Geo. c. 18.*

Game.

None to take Pheasants or Partridges
with Engines in another's Ground, or
kill or take away Hawks, &c. on Pe-
nalty 10 *l.* 11 *H. 7. c. 17.*

None to trace Hares in Snow, &c.
Penalty 6 *s.* 8 *d.* 15 *H. 8. c. 10.*

Killing any Pheasant, Partridge,
Pidgeon, Duck, Heron, Hare, or other
Game, forfeits 20 *s.* for each; and Sel-
ling, or Buying to sell, any Deer, Hare,
Pheasant, &c. forfeits 40 *s.* a Deer,
and 10 *s.* a Hare, &c.

Destroying Pheasant or Partridge be-
tween *July 1.* and *August 31.* to be im-
prisoned a Month, unless they pay
20 *s.* for each Pheasant, &c. taken. Con-

Constables with Warrant to search for Dogs, Nets, &c. 7 *Fac. I. c. 11.*

Lords of Manors may authorize Game-keepers to seize Guns, Dogs, &c. of Persons unqualify'd. Persons qualify'd are such as have free Warren, Lords of Manors, or having 100*l. per Annum.* 22 & 23 *Car. 2. cap. 25.*

Constables, &c. by Warrant to search Houses and suspected Persons for Game, and if found, and no good Account how he came by it, forfeits for every Hare, Pheasant, Partridge, &c. not under 5*s.* nor above 20*s.*

Inferior Tradesmen Hunting, &c. liable to the Penalties of the Act, and may be sued for Trespas.

Soldiers killing Game without Leave, forfeit 5*l.* an Officer, and 10*s.* a Soldier. 4 & 5 *W. & M. c. 23.*

Higlers, Chapmen, Carriers, Innkeepers, Victuallers, &c. having in their Custody any Hare, Pheasant, Heath-Game, &c. forfeit for each 5*l.* unless sent by some Person qualify'd; also Selling, or offering to Sale, the same Penalties; and keeping Dogs, &c. not qualify'd, forfeit 5*l.* or to be sent to the House of Correction for three Months. 5 *Ann. c. 14.*

The Stat. 5 *Ann.* made perpetual; and no Lord of a Manor to appoint more than one Game-keeper in one Manor, and to be enter'd with the Clerk of the Peace; and Game-keepers

ers not enter'd, or not qualified, killing Game, liable to the Penalties of 5 *Annæ.*

Also Hare, &c. found in a Shop, &c. is an exposing to Sale; killing Hare, &c. in the Night, the same Penalties; Driving Wild-fowl with Nets, &c. between July 1. and September 1. forfeits 5*s.* for each Fowl. 9 *Ann. c. 25.*

Game-keepers are to be either Persons qualify'd, or Servants to Lords of Manors, and not Tenants, &c. under Penalties of 5 *Ann. 3 Geo. c. 11.*

Note, Game-keepers, &c. may seize Nets, Engines, &c. for taking and destroying Fish. 4 *Ann. c. 12.*

Hawkers, &c.
Vid. pag. 453.

To produce Licences on Demand, or incur Penalties of Travelling without Licence.

On Lending a Licence to hire, the Trader forfeits 40*l.* and the Lender the Licence.

Traders in Linen and Woollen Manufactures sending their Goods to Markets and Fairs, and selling them by Wholesale, not to be taken as Hawkers; nor the Makers of Goods selling those of their own making. Nor Coopers, Glasiers, Tinkers, &c. going about and carrying Materials to mend Vessels, &c. 3 & 4 *Ann. c. 4.*

See the Stat. 4 *Geo. c. 6.* For obviating several Doubts in the former Acts relating to Hawkers.

Carriages

Carriages not to be drawn with above five Horses in Highways. 9 *Ann.* ^{*Highways.*} *Vid. pag. 516.* _{to 523.}

c. 18. *Vide* Carriers.

Persons neglecting to scower Ditches near the Highways, forfeit 2*s.* 6*d.* for every eight Yards not scowered; and permitting Soil to lie in the Highways eight Days after Notice to remove it, forfeit not exceeding 5*l.* nor under 20*s.* 1 *Geo.* c. 52.

Surveyors may make Drains in Lands adjoining to the Highways; and not presenting or giving in a State of the Ways, forfeit 5*l.* 1 *Geo.* c. 52.

And Justices are to hold a special Sessions for the Highways once in four Months. *per idem Stat.*

No Waggon travelling for Hire to be drawn with more than six Horses either in Length, or Pairs, or Side-ways, and no Cart with more than three, on Forfeiture of all the Horses above that Number respectively, with their Geer and Accoutrements, to the Use of the Seizor, who is first to deliver the same to a Constable, &c. and then make Oath before a Justice, who thereupon is to issue his Precept to the Constable, &c. to deliver the same to the Seizor, on Paying such reasonable Charges as the Justice shall allow. Stat. 5 *Geo.* c. 12.

And after September 29. no such Waggon having Wheels bound with Stricks or Tire of less Breadth than two Inches and

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and an half when worn, or set on with Rose-headed Nails, to be drawn with more than three Horses, on the like Forfeitures *Idem Stat.*

And hindering or attempting to hinder such Seizure, or rescuing the same, or using any Violence to the Seizor, on Oath thereof before a Justice by one Witness, to be committed for three Months without Bail, and to forfeit 10*l.* to be levied by the Justice's Warrant on his Goods, &c. and if not paid in three Days, the Goods, &c. to be sold, deducting Charges.

This Act not to extend to Carriages employ'd in Husbandry, or carrying Cheese, Butter, &c. one Tree, or Piece of Timber, one Stone, or Block of Marble, Carravans, Noblemens cover'd Carriages, &c. *Idem Stat.*

Iron and Iron works.

Leases, &c.
Stat. 8 Ann.
c. 17.

Vid. Lib. pag. 475.

No Goods or Chattels taken in Execution, are to be removed from the Place where taken before the Landlord be paid his Rent, if only one Year due.

Where Lessees fraudulently convey away Goods, &c. (with Intent to defraud the Landlord of his Rent) the Lessor or Landlord may within five Days seize such Goods, &c. where-soever found, as a Distress for the Rent in Arrear, except Goods, &c. sold for

a valuable Consideration before Seizure.

Also a Distress may be taken for Vid. pag. Rent in Arrear where Leases are expired, 110 to 130. red, provided it be made within six Months after, and the Tenant be in Possession.

And Goods seiz'd or distrain'd by this Act, are liable to Sales, and the Money to be distributed, as the Stat. 2 *W. & M. Sess. 1. Cap. 5. directs.* Vid.

Lib. ante, 321, 322.

Vide ante Carriers.

Maltsters concealing or conveying a Maltster. Vid. way Malt from the Sight of the Gauger, to forfeit 10 s. a Bushel; but Justices of Peace may mitigate Penalties. *Leather. Maltsters. Vid. pag. 488.*

2 *Ann. c. 2.*

No Maltster shall, in making Malt, mix Corn or Grain of one Wetting with Corn of a former Wetting, before the same is put on the Kiln for Drying, on Forfeiture of 5 s. for every Bushel so mix'd, one Moiety to the King, and the other to the Informer.

7 *Ann. c. 3.*

And pressing, treading, ramming, or forcing in the Cistern, uting Vat, or Couch, any Corn that is steeping or steeped to make Malt, forfeits 2 s. 6 d. for every Bushel. 9 *Ann. c. 3.*

The Time of Paying the Malt-Duty enlarged to four Months. 1 *Geo. 6.*

Vide

*Rent.**Silk Manufacture.**Tobacco.**Vide ante' Leases.**Vide post.*

See the Statute 12 *Ann. Sess. 2. c. 8.*
For encouraging the Tobacco-Trade,
which is continued during the Continuance of the Duties on Tobacco, by
5 *Georgii c. 7.*

Cutting Walnut-Leaves, Hop-Leaves, Sycamore, or other Leaves, Herbs or Plants, in Imitation of Tobacco, or colouring such Leaves, &c. to resemble Tobacco, or selling such Leaves, &c. mix'd or unmix'd with Tobacco, forfeits for every Pound Weight 5 s. to the King and Informer, with full Costs.

Exporting such Leaves, &c. or endeavouring to obtain a Drawback for the same, forfeits 5 s. for every Pound-Weight, besides the former Penalties.

Leaves, &c. so cut, &c. and all Engines used therein, may be search'd for and seiz'd by Persons authorized by the Treasury or Commissioners of the Customs, and if found, burnt, &c.

Servants, &c. employ'd in cutting, &c. such Leaves, &c. or knowingly vending the same, if convicted before two Justices, to be committed, and to hard Labour for a Time under six Months without Bail. Stat. 1 *Georgii, cap. 46.*

Making, mixing, or colouring Snuff with Okers, Umber, or other Colouring, (except Water tinged with *Venetian Red* only) or mixing any yellow

snuff.

yellow Ebony, Touchwood, or other Wood, Dirt, or Sand, or Dust-sifted from Tobacco, or knowingly Selling such Snuff, forfeits the Snuff, and $\frac{1}{2}l.$ for every Pound-Weight, recoverable by Action; to the King and Informer. *Idem Stat.*

For Tanners *vide* Curriers *ante.*

Twelve Standils of Oak to be left *Tannery.*
in every Acre of Wood fell'd at or under twenty-four Years old, or the like Number of Elm, Ash, &c. where no Oaks, on Penalty of $6s. 8d.$ for every Standil not left. $35 H. 8. c. 7.$

Hedge-breakers, &c. to be whipp'd: Constables, by a Justice's Warrant, may search for stolen Wood, Poles, Gates, Stiles, &c. and if the Party cannot give a good Account how he came by it, to make Recompence, and pay $10s.$ to the Poor. $43 El. cap. 7. 15 Car. 2. c. 2.$

And Buyers of stolen Wood to pay treble Value. *Idem Stat.*

See the Stat. $9 Ann. c. 15.$ That all Billets for Sale on Wharfs, Keys, &c. or landed in any Port, shall contain in Length three Foot four Inches, and be affixed and marked as follows:

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Compass

Compass of Inches.

Names of Billets.	Being round.		Half round.		Quarter cleft.		How to be cut or mark'd.
	Inch.	gr.	Inch.	gr.	Inch.	gr.	
A Single,	7	2	0	0	0	0	o No Notch.
A Cast,	10	2	12	1	12	0	o One Notch.
A Trois,	13	0	15	0	14	3	3 Three Notches in the Middle.
Two Cast,	15	0	17	1	17	0	o Two Notches. [in the middle.
Three Cast,	18	1	21	1	21	0	o A Notch at each End, and another
Four Cast,	21	1	24	2	24	0	o Four Notches.
Five Cast,	23	3	27	2	27	0	o Five Notches.
Six Cast,	26	0	30	0	29	2	2 Six Notches.
Seven Cast,	28	0	32	2	32	0	o Seven Notches.
Eight Cast,	30	0	34	3	34	0	o Eight Notches.
Nine Cast,	31	3	36	3	36	1	1 Nine Notches.
Ten Cast,	33	2	38	3	38	0	o Ten Notches.

Also Eleven Cast, 35—1. Twelve Cast, 36—3. Thirteen Cast, 38—1. Fourteen, 39—3. and Fifteen, 41 Inches; viz. Whole round, &c. in Proportion. *Vid.* Touching Coals, Lib. 466, 467.

And

And any Billets expos'd to Sale not so affized and mark'd, any Justice, or Mayor, &c. of the Place, may call six good Men of the Town, &c. and swear 'em to enquire, Whether all or any of the said Billets be of sufficient Affize: And if they present all or any not so affized, &c. the Justice, &c. may take such as are not mark'd, or falsely affized, as forfeited, and deliver it to the Overseers of the Poor of the Parish to be distributed among the Poor.

This Act not to extend to the Owners of Trees who make Billets for their own private Use only. And by 10 *Annæ*, c. 6. 'Tis not to extend to Billets made of Beech-wood. But by said *Stat.* 10 *Ann.* None to sell any Billets of Beech-wood by Retail within the Bills of Mortality till affized, cut, and mark'd according to the Usage of marking Beech Billets before the said former Act passed, or by the Weight of such Beech Billet, if the Buyers require it. 10 *A. c. 6.*

Persons maliciously cutting or spoiling Timber-Trees, Fruit-Trees, or other Trees, the Party damaged thereby shall have Satisfaction from the Inhabitants of the Parish; and to be viewed, and Damages and Costs to be recovered, as in Case of Hedges and Dikes overthrown in the Night, by *Stat.* 13. *E. 1.* And any two Justices where the Offence was, or the Sessions, may,

*Wed and
Tree, &c.*

Stat. 1 Geo:
c. 43.

may, on Complaint of any Inhabitant, or the Owner, cause the Offender to be apprehended, and finally determine the Offences, and commit the Offender to Correction and hard Labour for three Months without Bail, and to be publickly whipp'd once a Month.

And if any shall maliciously set on Fire any Wood, Under-wood, or Coppice, he shall suffer as a Felon, by the said Stat. 1 Geo. c. 48.

Woollen Manufacture.

There having been several late Statutes made relating to the Woollen Manufacture, and those too large to be here abridg'd, I shall only give the Reader their particular Titles, which will, in some Measure, shew their Import and Relation, viz.

1. An Act for the better ascertaining of the Lengths and Breadths of Woollen Cloths made in the County of York 7 *Ann. cap. 1.*

2. An Act for regulating, Improving, and Encouraging of the Woollen Manufacture, of mix'd or medley Broad-Cloth; and for the better Payment of the Poor employ'd therein. 10 *Ann. cap. 16.*

3. An Act to make the said Act, 10 *Ann.* more effectual for the Benefit of Trade in general; and also to render more effectual the Act *supra* of 7 *Ann.* 1 *Geo. cap. 15.*

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4. An Act for giving Liberty to Persons who have served their Apprenticeships in any Part of the Woollen Manufacture in *Colchester*, to work at their said Trades, and at the making of Bays within the said Town. 1 Geo. cap. 41.

See also an Act for making more effectual an Act made in the 8th Year of the late Queen, cap. 6. (which see in Tit. *Buttons, ante*) for employing the Manufacturers of this Kingdom by encouraging the Consumption of raw Silk and Mohair Yarn. 4 Geo. cap. 7.

Also an Act for Relief of the Wholesale Traders and Dealers in Bone-lace, by obviating several Doubts in the several Acts for Licensing Hawkers, &c. 4 Geo. c. 6.

silk Manufacture, &c.

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